MISSISSIPPI CODE 1972
Annotated

Evidence, Process and Juries
Limitation of Actions and
Prevention of Frauds

Titles 13 to 15

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME FOUR

EVIDENCE, PROCESS AND JURIES LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

§§ 13-1-1 to 15-3-117

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2019 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2019 Replacement Volume 4 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, volume and the 2002 and 2012 Replacement Volumes as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2019 Regular Session.

This volume contains the text of Titles 13 and 15 of the Mississippi Code of 1972 Annotated, as amended through the 2019 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22906-5389.

September 2019 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Amendment Notes
— Analyses
— Code Status
— Comparable Laws from other States
— Court Rules
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If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted. Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LAWS FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Laws from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Laws from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading “Judicial Decisions.” Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called “catchlines.” The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with “In general” first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

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§ 13-1-1. Provisions of chapter applicable to all courts.

All provisions contained in this chapter, unless restricted by their nature or by express provision to particular courts, shall apply to and govern all courts.

HISTORY: Codes, 1892, § 1810; 1906, § 1987; Hemingway's 1917, § 1647; 1930, § 1526; 1942, § 1687.

Cross References — Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

Applicability of the rules of evidence, see Miss. R. Evid. 101.

JUDICIAL DECISIONS

1. Waiver.

If suit is filed on either medical malpractice grounds or other grounds placing plaintiff's condition in issue, scope of waiver of medical privilege is limited to medical information which is relevant to injury placed in issue by plaintiff. Scott by & Through Scott v. Flynt, 704 So. 2d 998, 1996 Miss. LEXIS 147 (Miss. 1996).

RESEARCH REFERENCES

ALR.

Power of court sitting as trier of fact to dismiss at close of plaintiff's evidence, notwithstanding plaintiff has made out prima facie case. 55 A.L.R.3d 272.

Necessity, in criminal prosecution, of independent evidence of principal act to allow admission, under res gestae or excited utterance exception to hearsay rule, of statement made at time of, or subsequent to, principal act. 38 A.L.R.4th 1237.

Habit or routine practice evidence under Uniform Evidence Rule 406. 64 A.L.R.4th 567.

§ 13-1-3. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1857, ch. 61, art. 190; 1871, § 756; 1880, § 1599; 1892, § 1738; 1906, § 1915; Hemingway's 1917, § 1575; 1930, § 1527; 1942, § 1688]

Editor's Notes — Former § 13-1-3 provided that a person was competent to give evidence in any suit even if he or she had an interest in the result thereof.

RESEARCH REFERENCES

Law Reviews.

McCormick, The Repealer: Conflicts in Evidence Created by Misapplication of Mississippi Rule of Evidence 1103. 67 Miss L J 547, Winter, 1997.

§ 13-1-5. Competency of husband and wife.

Husbands and wives may be introduced by each other as witnesses in all cases, civil or criminal, and shall be competent witnesses in their own behalf, as against each other, in all controversies between them. Either spouse is a competent witness and may be compelled to testify against the other in any criminal prosecution of either husband or wife for a criminal act against any child, for contributing to the neglect or delinquency of a child, or desertion or nonsupport of children under the age of sixteen (16) years, or abandonment of children. But in all other instances where either of them is a party litigant the other shall not be competent as a witness and shall not be required to answer interrogatories or to make discovery of any matters involved in any such other instances without the consent of both.

HISTORY: Codes, 1857, ch. 61, art. 193; 1871, §§ 759, 760; 1880, § 1601; 1892, § 1739; 1906, § 1916; Hemingway's 1917, § 1576; 1930, § 1528; 1942, § 1689; Laws, 1928, ch. 35; Laws, 1954, ch. 236; Laws, 1978, ch. 395, § 1, eff from and after July 1, 1978.

Cross References — Husband-wife privilege, see § 43-19-43.

Testimony by spouses in proceedings for protection from domestic abuse, see § 93-21-19.

Husband-wife privilege, see Miss. R. Evid. 504.

General rule of competency, see Miss. R. Evid. 601.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application generally.
3. Competency of spouse as witness in general.
4. Witness for other spouse.
5. Witness against other spouse.
6. Controversies between spouses.
7. —Criminal prosecutions.
8. Communications between spouses.
9. Divorce, effect of.
10. Consent or waiver.
11. Failure of spouse to testify.
12. Evidence.

1. Validity.

Statutory provision that, where either husband or wife is party litigant, the other shall not be competent as a witness without consent of both, held not to deny due process by depriving opposing party of material evidence, since statute prescribes mere rule of evidence and does not affect substantial rights of parties. Whitney Nat'l Bank v. Stirling, 177 Miss. 325, 170 So. 692, 1936 Miss. LEXIS 255 (Miss. 1936).

2. Construction and application generally.

In a divorce case, the chancellor did not err in allowing the husband's previous wife to testify about the reason for her divorce, as it was relevant to the husband's character and to child custody. She did not testify to any confidential communications under Miss. Code Ann. § 13-1-5 or Miss. R. Evid. 504. McNeese v. McNeese, 119 So. 3d 264, 2013 Miss. LEXIS 172 (Miss. 2013).

Law enforcement officers' use of defendant's wife as confidential informant did not violate statute concerning spousal competency or evidence rule concerning spousal privilege. Dowbak v. State, 666 So. 2d 1377, 1996 Miss. LEXIS 6 (Miss. 1996).

Since the privilege protected by § 13-1-5 extends only to communications which are intended to be confidential, the presence of another person, even a family member, is deemed to mean that the communication was not intended to be confidential. Fanning v. State, 497 So. 2d 70, 1986 Miss. LEXIS 2645 (Miss. 1986).

This provision does not operate to exclude testimony of a third person as to declarations of the wife of the accused which are part of the res gestae. Eubanks v. State, 242 Miss. 372, 135 So. 2d 183, 1961 Miss. LEXIS 571 (Miss. 1961).

Statutory provisions that all persons, whether interested parties to suit, or not, make competent witnesses (Code 1942, § 1688), that either party to suit shall have right to force adversary to testify (Code 1942, § 1710), that examination of interested witnesses may be had in open court (Code 1942, § 1711), and the provisions of this section [Code 1942, § 1689], must be construed together, and so as to except this section from operation of other statutes. Whitney Nat'l Bank v. Stirling, 177 Miss. 325, 170 So. 692, 1936 Miss. LEXIS 255 (Miss. 1936).

3. Competency of spouse as witness in general.

The prosecution cannot call the defendant's wife to the stand to testify, thereby forcing the defendant to assert, before the jury, his right to have her testimony excluded. Simpson v. State, 497 So. 2d 424, 1986 Miss. LEXIS 2724 (Miss. 1986).

Where judgment creditor obtained judgment plus interest and attorney fees against husband, and subsequently served writ of garnishment upon wife, wife could properly assert marital privilege under § 13-1-5. Fidelity Nat'l Bank v. Center Management, Inc., 585 F. Supp. 1406, 1984 U.S. Dist. LEXIS 15921 (S.D. Miss. 1984).

In a prosecution for murder or manslaughter, the deceased is in no sense a party to the suit, and the wife of deceased was competent to testify as to what occurred at the scene of the killing, and as to statements made by others, or statements made in the presence of others, bearing on the material issues in controversy. McBride v. State, 188 Miss. 620, 196 So. 633, 1940 Miss. LEXIS 83 (Miss. 1940).

In suit against husband and wife and their grantee to set aside, as fraudulent, conveyance of homestead owned by wife and to enforce judgment against husband and wife, neither husband nor wife could be called as an adverse witness, though homestead was owned by wife, since husband had interest in homestead, and any material evidence that either would give would affect interest of both. Whitney Nat'l Bank v. Stirling, 177 Miss. 325, 170 So. 692, 1936 Miss. LEXIS 255 (Miss. 1936).

4. Witness for other spouse.

Husband of beneficiary under will was competent attesting witness to will. Gore v. Dace, 157 Miss. 221, 127 So. 901, 1930 Miss. LEXIS 283 (Miss. 1930).

The widow is a competent witness on behalf of the estate of her deceased husband to prove a conversation between her husband in his lifetime and the opposing party. Stuhlmuller v. Ewing, 39 Miss. 447, 1860 Miss. LEXIS 74 (Miss. 1860).

5. Witness against other spouse.

Because defense counsel failed to lodge an objection to the husband's testimony against defendant at trial, defendant's claim was barred from review. Sandlin v. State, 156 So. 3d 813, 2013 Miss. LEXIS 538 (Miss. 2013).

In defendant's trial for exploitation of children, defendant's wife was not incompetent to testify against defendant because the privilege under Miss. R. Evid. 601(a)(2) and Miss. R. Evid. 504(d) did not apply, as defendant was being prosecuted for a criminal act against a child. Hood v. State, 17 So. 3d 548, 2009 Miss. LEXIS 379 (Miss. 2009).

Defendant's marriage to his first wife ended in May 2002 when, upon the first wife's petition, the Florida court declared that defendant died on August 13, 1998, in the Gulf of Mexico; as such, she was his ex-wife at the time of the trial and, therefore, competent to testify against him, and the information to which she testified was not privileged communication, so Miss. Code Ann. § 13-1-5 did not apply to exclude her testimony. Butt v. State, 986 So. 2d 981, 2007 Miss. App. LEXIS 783 (Miss. Ct. App. 2007).

Although testimony by third party as to substance of party's conversation with criminal defendant's spouse is prohibited, testimony as to fact that conversation with spouse took place is not. Davis v. State, 472 So. 2d 428, 1985 Miss. LEXIS 2119 (Miss. 1985).

In a prosecution for child abuse, the trial court properly allowed defendant's wife to testify against him, and to be cross-examined by the district attorney as an adverse witness, since § 13-1-5 provides no spousal immunity in a prosecution for child abuse. Shelton v. State, 445 So. 2d 844, 1984 Miss. LEXIS 1625 (Miss. 1984).

In a prosecution for aggravated assault by a wife against her husband, there was no error in compelling the husband to testify against his wife, even though this was against his wishes, where the husband was introduced as a witness by the State of Mississippi, not by his spouse, and the charge did not concern a criminal act against a child, notwithstanding § 13-1-5. Stubbs v. State, 441 So. 2d 1386, 1983 Miss. LEXIS 3072 (Miss. 1983).

In a prosecution for manslaughter by culpable negligence the court improperly admitted statements made by defendant's wife to an officer outside the defendant's presence, where such testimony was hearsay and violated the confidential communication privilege between husband and wife. Bayse v. State, 420 So. 2d 1050, 1982 Miss. LEXIS 2176 (Miss. 1982).

In a prosecution for murder, it was error to permit the state to cross-examine the defendant about the presence of his wife at the scene of the crime where the defense had successfully objected to the testimony of the wife when she had been called to the stand by the state. Owens v. State, 405 So. 2d 692, 1981 Miss. LEXIS 2279 (Miss. 1981).

In the prosecution of the defendant for the murder of his wife's father, the trial court properly permitted the wife to testify against the defendant where the nearly simultaneous assault upon the wife by her husband and his threat to kill her "next" on the occasion that he shot and killed her father was such a controversy between them as to make her a competent witness when she was willing to testify. Maiben v. State, 405 So. 2d 87, 1981 Miss. LEXIS 2246 (Miss. 1981).

In a manslaughter prosecution based upon a death arising from child abuse, the child's mother could not be compelled to testify against her husband. Tapp v. State, 347 So. 2d 974, 1977 Miss. LEXIS 2062 (Miss. 1977).

A wife is a competent witness in the prosecution of her husband for crimes involving personal violence against their child. Merritt v. State, 339 So. 2d 1366, 1976 Miss. LEXIS 1696 (Miss. 1976).

Peace officer's testimony as to statements against accused husband's interest made in his presence by accused's wife was inadmissible, both as hearsay and as a violation of this section [Code 1942, § 1689]. Caldwell v. State, 194 So. 2d 878, 1967 Miss. LEXIS 1419 (Miss. 1967).

In a criminal trial the defendant's wife could not testify against him without the consent of both. Wallace v. State, 254 Miss. 944, 183 So. 2d 525, 1966 Miss. LEXIS 1590 (Miss. 1966).

Under this section [Code 1942, § 1689] a wife is a competent witness before the grand jury investigating a charge that her husband had incestuous relations with their minor daughter, and an indictment returned against the husband is not void. Graham v. State, 250 Miss. 816, 168 So. 2d 496, 1964 Miss. LEXIS 507 (Miss. 1964).

Where prosecutor erroneously called defendant's estranged wife to the witness stand causing defendant to object in presence of the jury to her competency as witness against him, defendant was not entitled to reversal since he made no motion for a mistrial at time of trial. Blackwell v. State, 44 So. 2d 409, 1950 Miss. LEXIS 457 (Miss. 1950).

In criminal prosecution against husband for unlawful possession of intoxicating liquor, it is improper for prosecution to call defendant's wife and offer her as witness against him. Outlaw v. State, 208 Miss. 13, 43 So. 2d 661, 1949 Miss. LEXIS 402 (Miss. 1949).

Wife is incompetent as witness against husband in prosecution for unlawful possession of intoxicating liquor unless both she and her husband consent, and when case is close it is prejudicial error for prosecution to ask defendant and court to require answer as to whether defendant objected to wife's testifying for state, particularly where statement of court impliedly left it entirely to the husband to consent or object. Outlaw v. State, 208 Miss. 13, 43 So. 2d 661, 1949 Miss. LEXIS 402 (Miss. 1949).

Common-law husband is not competent witness against his common-law wife in criminal prosecution against her for forgery. Wilson v. State, 204 Miss. 111, 37 So. 2d 19, 1948 Miss. LEXIS 348 (Miss. 1948).

Denial by court of motion for preliminary hearing on question of competency of state's witness to testify in forgery prosecution against accused claiming to be common-law wife of witness is prejudicial error. Wilson v. State, 204 Miss. 111, 37 So. 2d 19, 1948 Miss. LEXIS 348 (Miss. 1948).

Introduction in prosecution for bigamy of defendant's first wife who was sworn but withdrawn before testifying, was harmless error, where guilt of accused was fully established by other evidence. Bryant v. State, 179 Miss. 739, 176 So. 590, 1937 Miss. LEXIS 67 (Miss. 1937).

Husband not competent against wife suing third person. Spencer v. O'Bryant, 140 Miss. 474, 106 So. 6, 1925 Miss. LEXIS 282 (Miss. 1925).

State may not introduce wife to prove former marriage in prosecution of husband for bigamy. McQueen v. State, 139 Miss. 457, 104 So. 168, 1925 Miss. LEXIS 157 (Miss. 1925).

At common law one spouse could not be introduced to establish crime against other, except offenses committed by one against other. McQueen v. State, 139 Miss. 457, 104 So. 168, 1925 Miss. LEXIS 157 (Miss. 1925).

Bill for discovery attempting to make husband and wife testify against one another, not maintainable. Strauss v. Hutson, 104 Miss. 637, 61 So. 594, 1913 Miss. LEXIS 60 (Miss. 1913).

Wife not competent witness against accused prosecuted for burglary. Finklea v. State, 94 Miss. 777, 48 So. 1, 1909 Miss. LEXIS 333 (Miss. 1909).

Witness before grand jury could not decline to identify woman returning stolen property because she was wife of the thief, on the theory that since she could not be compelled to testify against her husband, the witness could not be compelled to testify. Rogers v. State, 88 Miss. 38, 40 So. 744, 1906 Miss. LEXIS 132 (Miss. 1906).

The wife is not a competent witness for a third person in a suit in chancery against the husband, who is joined as defendant, even though he be not a necessary party. Leach v. Shelby, 58 Miss. 681, 1881 Miss. LEXIS 24 (Miss. 1881).

A wife is not a competent witness against her husband who is on trial for crime. Byrd v. State, 57 Miss. 243, 1879 Miss. LEXIS 57 (Miss. 1879).

6. Controversies between spouses.

A husband's assaults on his present wife, which formed the basis of a law suit by his former wife seeking custody of the parties' minor child, constituted a "controversy" between the husband and his current wife under § 13-5-1, and, thus, although the present wife could not be compelled to testify against her husband, she would, if willing, be competent to testify as to his acts of violence against her. McCuskey v. Jones, 441 So. 2d 1372, 1983 Miss. LEXIS 3062 (Miss. 1983).

7. —Criminal prosecutions.

Wife was incompetent as witness against husband to establish rape committed on her prior to marriage; wife is competent witness to acts of violence committed on her by husband only as to offenses during time marriage relation exists. Doss v. State, 156 Miss. 522, 126 So. 197, 1930 Miss. LEXIS 190 (Miss. 1930).

Prosecution of husband for vagrancy by wife is controversy between husband and wife. McRae v. State, 104 Miss. 861, 61 So. 977, 1913 Miss. LEXIS 90 (Miss. 1913).

The wife is a competent witness against her husband if the crime be an assault and battery committed on her person. Turner v. State, 60 Miss. 351, 1882 Miss. LEXIS 62 (Miss. 1882).

8. Communications between spouses.

Letter from wife to victim was privileged and should not have been admitted over wife's objection, notwithstanding husband's waiver of privilege, in prosecution of son for assault with intent to murder his father. Martin v. State, 203 Miss. 187, 33 So. 2d 825, 1948 Miss. LEXIS 249 (Miss. 1948).

Husband or wife cannot testify against other after divorce as to privileged communications. Hesdorffer v. Hiller, 111 Miss. 16, 71 So. 166, 1916 Miss. LEXIS 231 (Miss. 1916).

Wife competent to relate conduct and declarations of husband in presence of others, but not to her alone. Whitehead v. Kirk, 104 Miss. 776, 61 So. 737, 1913 Miss. LEXIS 85 (Miss. 1913).

9. Divorce, effect of.

In a prosecution for murder, a wife could testify against her husband regarding a statement made by him to her, in the presence of five other people where the parties had been divorced after the homicide but before the trial. Holden v. State, 399 So. 2d 1343, 1981 Miss. LEXIS 2011 (Miss. 1981).

The husband or wife may testify against each other after divorce, if the testimony does not relate to privileged communications. Hesdorffer v. Hiller, 111 Miss. 16, 71 So. 166, 1916 Miss. LEXIS 231 (Miss. 1916).

Divorced husband cannot testify against wife as to confidential communication between them. Hesdorffer v. Hiller, 111 Miss. 16, 71 So. 166, 1916 Miss. LEXIS 231 (Miss. 1916).

10. Consent or waiver.

There is no merit to objection to testimony on ground of inter-spousal immunity where spouse testified voluntarily. Jordan v. State, 513 So. 2d 574, 1987 Miss. LEXIS 2817 (Miss. 1987).

The competency of a wife to testify against her husband in a criminal prosecution may be waived, and either the husband or the wife may testify in any proceeding, civil or criminal, where both consent thereto. Brewer v. State, 233 So. 2d 779, 1970 Miss. LEXIS 1669 (Miss. 1970).

In a workmen's compensation proceeding wherein both alleged widows of employee claimed compensation, one of the claimants who did not object to testimony of a witness who was her undivorced husband in effect consented that such witness could testify and she could not thereafter be heard to say that her undivorced husband was not a competent witness under this section [Code 1942, § 1689]. United Timber & Lumber Co. v. Alleged Dependents of Hill, 226 Miss. 540, 84 So. 2d 921, 1956 Miss. LEXIS 432 (Miss. 1956).

Where defendant, in a prosecution for neglecting to provide for his children, attempted to explain why he was separated from wife and consented to wife stating her side of the matter, error if any in permitting wife to testify held not reversible. Clark v. State, 181 Miss. 455, 180 So. 602, 1938 Miss. LEXIS 87 (Miss. 1938).

In larceny prosecution against husband for taking money belonging to the wife, permitting wife to testify was not reversible error, where objection to her competency was not made before reception of testimony. Huff v. State, 176 Miss. 443, 169 So. 839, 1936 Miss. LEXIS 153 (Miss. 1936).

11. Failure of spouse to testify.

In a murder prosecution, the state is not entitled to an instruction regarding the defendant's failure to call his wife to the stand. Simpson v. State, 497 So. 2d 424, 1986 Miss. LEXIS 2724 (Miss. 1986).

At trial of murder charge to which defendant's sole defense was self-defense, remarks by prosecutor, in closing argument, that the only reason defendant married his wife because he wanted to marry the only eyewitness to the murder he had committed, constituted an impermissible comment upon defendant's failure to call his wife to testify, and the trial court's refusal to sustain objections to such remarks was reversible error. Simpson v. State, 497 So. 2d 424, 1986 Miss. LEXIS 2724 (Miss. 1986).

General rule that an unfavorable inference may be indulged against a party who fails to produce material and necessary testimony which is within his power to control did not apply in a case where the material witness in question was wife of the party, and remark made by appellee's counsel during summation with reference to the failure of the appellant to call his wife to testify required reversal. Daniels v. Beeson, 312 So. 2d 441, 1975 Miss. LEXIS 1643 (Miss. 1975).

Assignment of error that state was permitted to ask accused's wife if she had testified at the preliminary trial and to make comment on such failure, without basis in record, will not be considered on appeal. Higgins v. State, 120 Miss. 823, 83 So. 245, 1919 Miss. LEXIS 134 (Miss. 1919).

Prosecuting attorney's comment on failure of accused to call wife as witness, error. Smith v. State, 112 Miss. 802, 73 So. 793, 1916 Miss. LEXIS 180 (Miss. 1916), overruled, Ladnier v. State, 155 Miss. 348, 124 So. 432, 1929 Miss. LEXIS 299 (Miss. 1929).

Asking accused on cross-examination if wife would testify and if he would object to her testimony, improper but not reversible error. Carter v. State, 99 Miss. 435, 54 So. 734, 1911 Miss. LEXIS 189 (Miss. 1911).

Error to refuse instruction to disregard comments of district attorney on failure of husband to call wife as witness. Johnson v. State, 94 Miss. 91, 47 So. 897, 1908 Miss. LEXIS 30 (Miss. 1908).

The failure of the husband to call his wife as a witness for him in a criminal case is not a proper subject of comment by counsel. Johnson v. State, 63 Miss. 313, 1885 Miss. LEXIS 67 (Miss. 1885); Cole v. State, 75 Miss. 142, 21 So. 706, 1897 Miss. LEXIS 90 (Miss. 1897).

12. Evidence.

The court did not err when it admitted a pistol and jewelry into evidence, notwithstanding that those items were obtained by virtue of information obtained from the defendant's wife; this section, insofar as it relates to a criminal prosecution, limits itself to the proper conduct of the trial itself and does not purport to regulate or restrict the conduct of police officers in an ongoing criminal investigation. Clunan v. State, 736 So. 2d 1078, 1999 Miss. App. LEXIS 75 (Miss. Ct. App. 1999).

Statement defendant's wife made while in custody was inadmissible in light of explicit prohibition against spousal testimony. Williams v. State, 667 So. 2d 15, 1996 Miss. LEXIS 3 (Miss. 1996), overruled in part, Smith v. State, 986 So. 2d 290, 2008 Miss. LEXIS 339 (Miss. 2008).

There was no violation of the statute concerning spousal competency, § 13-1-5, or the evidence rule concerning the husband-wife privilege, Rule 504, Miss. R. Ev., where a defendant's wife told the police where to locate certain items which were subsequently used as physical evidence in the prosecution of the defendant for capital murder committed during the commission of a robbery, since the location of the items did not fall within any protected class of communication, and no out-of-court statements or trial testimony of the wife was admitted against the defendant. Ladner v. State, 584 So. 2d 743, 1991 Miss. LEXIS 434 (Miss.), cert. denied, 502 U.S. 1015, 112 S. Ct. 663, 116 L. Ed. 2d 754, 1991 U.S. LEXIS 7261 (U.S. 1991).

Although the intended victim of an attempted murder could testify that he was informed of the intended crime, it was reversible error to permit him to testify, over objection, to telephone conversations initiated by the defendant's wife wherein she related to him the major details of the plot by her husband and others to take his life. Ford v. State, 218 So. 2d 731, 1969 Miss. LEXIS 1616 (Miss. 1969).

Admission of statement made by defendant's wife to witness in prosecution for murder that "he has killed Marvin and fixing to kill –," was not prejudicial error where defendant admitted the killing. Harris v. State, 209 Miss. 141, 46 So. 2d 91, 1950 Miss. LEXIS 372 (Miss. 1950).

Although wife's letter to the prosecuting witness in a case of assault with intent to murder was privileged in the absence of a waiver by both husband and wife, the defendant could not set up its admission as error where its contents were not prejudicial to the defendant. Martin v. State, 203 Miss. 187, 33 So. 2d 825, 1948 Miss. LEXIS 249 (Miss. 1948).

No statement made by husband either as a witness or otherwise can be used against the wife in any litigation to which she is a party, unless the husband was acting as the authorized agent of the wife. Gunter v. Reeves, 198 Miss. 31, 21 So. 2d 468, 1945 Miss. LEXIS 166 (Miss. 1945).

Rule that no statement made by husband can be used against the wife in a litigation to which she is a party is inapplicable so far as statement or admission is to explain the conduct of a third person. Gunter v. Reeves, 198 Miss. 31, 21 So. 2d 468, 1945 Miss. LEXIS 166 (Miss. 1945).

Testimony of a third person in a murder prosecution as to statement made by defendant's wife to the defendant was incompetent and prejudicial to the defendant, since the wife herself was incompetent to testify against her husband under this section [Code 1942, § 1689]. Smith v. State, 193 Miss. 474, 10 So. 2d 352, 1942 Miss. LEXIS 139 (Miss. 1942).

Where wife testified against husband in larceny prosecution without objection, court's denial of defendant's motion made, at conclusion of State's evidence, on ground that evidence was not sufficient to make out offense, held not reversible error, since court was not required to separate objectionable evidence from evidence which was free from objection. Huff v. State, 176 Miss. 443, 169 So. 839, 1936 Miss. LEXIS 153 (Miss. 1936).

Evidence of charges made by wife against husband accusing him of crime not admissible as she could not testify that she made the accusation. Pearson v. State, 97 Miss. 841, 53 So. 689, 1910 Miss. LEXIS 315 (Miss. 1910).

RESEARCH REFERENCES

ALR.

Right of one against whom testimony is offered to invoke privilege of communication between others. 2 A.L.R.2d 645.

Conversations between husband and wife relating to property or business as within rule excluding private communications between them. 4 A.L.R.2d 835.

"Communications" within testimonial privilege of confidential communications between husband and wife as including knowledge derived from observation by one spouse of acts of other spouse. 10 A.L.R.2d 1389.

Crimes against spouse within exception permitting testimony by one spouse against other in criminal prosecution. 11 A.L.R.2d 646.

Calling or offering accused's spouse as witness for prosecution as prejudicial. 76 A.L.R.2d 920.

Spouse as competent witness for or against co-offender with other spouse. 90 A.L.R.2d 648.

Criminal liability for contributing to delinquency of minor as affected by the fact that minor has not become a delinquent. 18 A.L.R.3d 824.

Competency of one spouse to testify against other in prosecution for offense against third party as affected by fact that offense against spouse was involved in same transaction. 36 A.L.R.3d 820.

Competency of one spouse to testify against other in prosecution for offense against child of both or either. 93 A.L.R.3d 1018.

Effect, on competency to testify against spouse or on martial communication privilege, of separation or other martial instability short of absolute divorce. 98 A.L.R.3d 1285.

Spouse's betrayal or connivance as extending marital communications privilege to testimony of third person. 3 A.L.R.4th 1104.

Communication between unmarried couple living together as privileged. 4 A.L.R.4th 422.

Testimonial privilege for confidential communications between relatives other than husband and wife – state cases. 6 A.L.R.4th 544.

Existence of spousal privilege where marriage was entered into for purpose of barring testimony. 13 A.L.R.4th 1305.

Propriety and prejudicial effect of prosecutor's argument commenting on failure of defendant's spouse to testify. 26 A.L.R.4th 9.

Presence of child at communication between husband and wife as destroying confidentiality of otherwise privileged communication between them. 39 A.L.R.4th 480.

Insured-insurer communications as privileged. 55 A.L.R.4th 336.

Communications between spouses as to joint participation in crime as within privilege of interspousal communications. 62 A.L.R.4th 1134.

Crimes against spouse within exception permitting testimony by one spouse against other in criminal prosecution – modern state cases. 74 A.L.R.4th 223.

Competency of one spouse to testify against other in prosecution for offense against third party as affected by fact that offense against spouse was involved in same transaction. 74 A.L.R.4th 277.

Adverse presumption or inference based on party's failure to produce or examine spouse – modern cases. 79 A.L.R.4th 694.

Marital privilege under Rule 501 of Federal Rules of Evidence. 46 A.L.R. Fed. 735.

Situations in which federal courts are governed by state law of privilege under Rule 501 of the Federal Rules of Evidence. 48 A.L.R. Fed. 259.

Applicability, in civil action, of provisions of Omnibus Crime Control and Safe Streets Act of 1986, prohibiting interception of communications (18 USCS § 2511(1)), to interceptions by spouse, or spouse's agent, of conversations of other spouse. 139 A.L.R. Fed. 517.

Am. Jur.

81 Am. Jur. 2d (Rev), Witnesses §§ 216, 236 et seq.

CJS.

98 C.J.S., Witnesses §§ 222 et seq.

Law Reviews.

McCormick, The Repealer: Conflicts in Evidence Created by Misapplication of Mississippi Rule of Evidence 1103. 67 Miss L J 547, Winter, 1997.

§§ 13-1-7 and 13-1-9. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-1-7. [Codes, 1857, ch. 61, art. 190; 1871, § 758; 1880, § 1602; 1892, § 1740; 1906, § 1917; Hemingway's 1917, § 1577; 1930, § 1529; 1942, § 1690; Laws, 1896, p. 107]

§ 13-1-9. [Codes, 1880, § 1603; 1892, § 1741; 1906, § 1918; Hemingway's 1917, § 1578; 1930, § 1530; 1942, § 1691; Laws, 1882, p. 109]

Editor's Notes — Former § 13-1-7 concerned the competency of a claimant against the estate of a decedent or a person non compos mentis.

Former § 13-1-9 related to competency of an accused.

§ 13-1-11. Conviction, except for perjury or subornation of perjury, as no disqualification.

A conviction of a person for any offense, except perjury or subornation of perjury, shall not disqualify such person as a witness, but such conviction may be given in evidence to impeach his credibility. A person convicted of perjury or subornation of perjury shall not afterwards be a competent witness in any case, although pardoned or punished for the same.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, title 8 (18); 1857, ch. 61, art. 191; 1871, § 779; 1880, § 1600; 1892, § 1743; 1906, § 1920; Hemingway's 1917, § 1580; 1930, § 1531; 1942, § 1692.

Cross References — What constitutes perjury, see § 97-9-59.

Commitment by court of party reasonably believed to have committed perjury before court, see § 99-3-29.

Requisites of an indictment for perjury, see § 99-7-39.

Requisites of an indictment for subornation of perjury, see § 99-7-41.

Impeachment of witness by evidence of conviction of crime, see Miss. R. Evid. 609.

JUDICIAL DECISIONS

1. In general.

Criminal statute and rule of evidence rendering convicted perjurer incompetent to testify in criminal proceeding violated provision of state constitution entitling defendant to compulsory process, as evidentiary rule gave district attorney discretion as to whether to render particular witness incompetent by prosecuting him for perjury or preserve his competence by declining to prosecute known perjury. Fuselier v. State, 702 So. 2d 388, 1997 Miss. LEXIS 529 (Miss. 1997).

A state's witness was not incompetent to testify at a capital murder trial on the basis that he was a conceded perjurer where he had not been convicted of perjury. White v. State, 532 So. 2d 1207, 1988 Miss. LEXIS 365 (Miss. 1988).

In ruling on the admissibility of a prior conviction for impeachment purposes, a trial judge must make a determination that the probative value outweighs the prejudicial effect of the evidence on the record, and should articulate the reasons for his findings. As a framework for articulating the court's determination on the record, the judge should consider the impeachment value of the crime, the point in time of the conviction and the witness's subsequent history, the similarity of the past crime and the charged crime, the importance of the defendant's testimony, and the centrality of the credibility issue. Johnson v. State, 525 So. 2d 809, 1988 Miss. LEXIS 238 (Miss. 1988).

Under law preceding adoption of new Mississippi Rules of Evidence as of January 1, 1986, driving under influence of alcohol was misdemeanor of sufficient gravity that conviction thereof could be used to impeach witness. Wetz v. State, 503 So. 2d 803, 1987 Miss. LEXIS 2362 (Miss. 1987).

Defendant charged with armed robbery is denied fair trial by introduction of detail surrounding prior conviction and evidence of other crimes not resulting in convictions; error may be raised on appeal notwithstanding defendant's failure to object at time of trial where development of inadmissible detail is lengthy and repetitious. Gallion v. State, 469 So. 2d 1247, 1985 Miss. LEXIS 2096 (Miss. 1985).

In a prosecution for burglary and theft, the prosecutor was properly allowed to specify each crime that defendant had been convicted of prior to trial, since any felony may be used to impeach the testimony of a witness under § 13-1-11. Johnson v. State, 452 So. 2d 850, 1984 Miss. LEXIS 1764 (Miss. 1984), but see McCarty v. State, 554 So. 2d 909, 1989 Miss. LEXIS 499 (Miss. 1989).

Under § 13-1-11, defendant's prior convictions were properly introduced to impeach him. Burns v. State, 438 So. 2d 1347, 1983 Miss. LEXIS 2934 (Miss. 1983).

In a prosecution for the sale of marijuana, the trial court committed reversible error in limiting the impeachment of the state's undercover informant to questions about the latter's reputation for truth and veracity and excluding any cross-examination on the informant's prior convictions. Valentine v. State, 396 So. 2d 15, 1981 Miss. LEXIS 1977 (Miss. 1981).

The trial court in an armed robbery prosecution erred in refusing to allow defense counsel to question an accomplice-prosecution witness concerning convictions of misdemeanors, since a witness' credibility may be impeached by evidence of misdemeanors as well as infamous crimes; the trial court also erred in refusing to permit defense counsel to cross-examine another witness concerning the nature of the felonies of which he had previously been convicted. Sanders v. State, 352 So. 2d 822, 1977 Miss. LEXIS 1983 (Miss. 1977).

Although the defendant admitted on direct examination that he had been previously convicted of a crime this did not foreclose the prosecution from cross-examining him on this point. Wells v. State, 288 So. 2d 860, 1974 Miss. LEXIS 1877 (Miss. 1974).

The jury in a robbery case may take into consideration admitted convictions of defendants testifying as witnesses of fighting, disorderly conduct, assault and battery, larceny, vagrancy, resisting arrest, and breaking jail. Parrish v. State, 237 Miss. 37, 112 So. 2d 548, 1959 Miss. LEXIS 446 (Miss. 1959).

In a prosecution for the sale of intoxicating liquors, since defendant's admission, upon cross-examination, that on the day prior to the date of the alleged offense he had been convicted of possessing liquor went to defendant's credibility as a witness, and the loss or impairment of credibility affected both defendant's character and reputation, the trial court committed reversible error in refusing to instruct that the jury was required to believe from the evidence, beyond a reasonable doubt, that the defendant made the particular sale of liquor, and that they were not warranted in convicting him for the sale merely because of his former conviction of possessing liquor and the probable attendant character and reputation arising therefrom. Hassell v. State, 229 Miss. 824, 92 So. 2d 194, 1957 Miss. LEXIS 330 (Miss. 1957).

At common law a person convicted of most felonies was disqualified as a witness, but the statute removes this disqualification and conviction now may be used to impeach his credibility and that is a question for the jury. Wetzel v. State, 225 Miss. 450, 76 So. 2d 188, 76 So. 2d 194, 76 So. 2d 846, 78 So. 2d 774, 84 So. 2d 429, 1954 Miss. LEXIS 607, 1954 Miss. LEXIS 608, 1955 Miss. LEXIS 601, 1955 Miss. LEXIS 602, 1956 Miss. LEXIS 396, 1957 Miss. LEXIS 583 (Miss. 1957).

Conviction of perjury, though creating a general disqualification to testify at common law and in Mississippi, goes only to the convict's credit in the federal court, at least when the conviction was under the federal statute punishing perjury. Firemen's Mut. Ins. Co. v. Aponaug Mfg. Co., 149 F.2d 359, 1945 U.S. App. LEXIS 2597 (5th Cir. Miss. 1945).

Evidence of conviction for offense except perjury and subornation of perjury is admissible to impeach the credibility of witness. Brister v. Dunaway, 149 Miss. 5, 115 So. 36, 1927 Miss. LEXIS 105 (Miss. 1927).

Accused testifying in his own behalf may be impeached on cross-examination by proof of prior convictions of crimes or misdemeanors. Williams v. State, 87 Miss. 373, 39 So. 1006, 1905 Miss. LEXIS 151 (Miss. 1905).

Under the statute a convicted principal may testify against his accessory. Keithler v. State, 18 Miss. 192, 1848 Miss. LEXIS 74 (Miss. 1848).

RESEARCH REFERENCES

ALR.

Conviction in another jurisdiction as disqualifying witness. 2 A.L.R.2d 579.

Propriety, on impeaching credibility of witness in civil case by showing former conviction, of questions relating to nature and extent of punishment. 67 A.L.R.3d 761.

Propriety, on impeaching credibility of witness in criminal case by showing former conviction, of questions relating to nature and extent of punishment. 67 A.L.R.3d 775.

Use of unrelated misdemeanor conviction (other than for traffic offense) to impeach general credibility of witness in state civil case. 97 A.L.R.3d 1150.

Conviction by courts-martial as proper subject of cross-examination for impeachment purposes. 7 A.L.R.4th 468.

Propriety of jury instruction regarding credibility of witness who has been convicted of a crime. 9 A.L.R.4th 897.

Permissibility of impeaching credibility of witness by showing verdict of guilty without judgment of sentence thereon. 28 A.L.R.4th 647.

Materiality of testimony forming basis of perjury charge as question for court or jury in state trial. 37 A.L.R.4th 948.

Requirement that defendant in state court testify in order to preserve alleged trial error in rulings on admissibility of prior conviction impeachment evidence under Uniform Rule of Evidence 609, or similar provision or holding – post-Luce cases. 80 A.L.R.4th 1028.

Propriety of using prior conviction for drug dealing to impeach witness in criminal trial. 37 A.L.R.5th 319.

Review on appeal, where accused does not testify, of trial court's preliminary ruling that evidence of prior convictions will be admissible under Rule 609 of the Federal Rules of Evidence if accused does testify. 54 A.L.R. Fed. 694.

Am. Jur.

81 Am. Jur. 2d (Rev), Witnesses §§ 187, 189.

3 Am. Jur. Proof of Facts, Character and Reputation, Proof No. 1 (general reputation in community or in place of employment, business, or profession).

3 Am. Jur. Proof of Facts, Conviction of Crime, Proof No. 1 (cross-examination concerning previous conviction).

3 Am. Jur. Proof of Facts, Conviction of Crime, Proof No. 2 (introduction of record after denial of previous conviction).

36 Am. Jur. Proof of Facts 2d 747, Impeachment of Witness by Prior Criminal Conviction.

CJS.

98 C.J.S., Witnesses §§ 190-192.

Law Reviews.

McCormick, The Repealer: Conflicts in Evidence Created by Misapplication of Mississippi Rule of Evidence 1103. 67 Miss. L. J. 547, Winter, 1997.

§ 13-1-13. Witness may be examined touching interest or convictions.

Any witness may be examined touching his interest in the cause or his conviction of any crime, and his answers may be contradicted, and his interest or his conviction of a crime established by other evidence. A witness shall not be excused from answering any material and relevant question, unless the answer would expose him to criminal prosecution or penalty.

HISTORY: Codes, 1857, ch. 61, art. 208; 1871, § 778; 1880, § 1607; 1892, § 1746; 1906, § 1923; Hemingway's 1917, § 1583; 1930, § 1532; 1942, § 1693.

Cross References — Relevancy of evidence generally, see Miss. R. Evid. 401-412.

Admissibility of evidence of religious beliefs or opinions of witness with respect to issue of credibility, see Miss. R. Evid. 610.

Taking testimony, see Miss. R. Civ. P. 43.

JUDICIAL DECISIONS

ANALYSIS

1. Examination and cross-examination in general.
2. Interest in cause.
3. Conviction of crime.
4. Contradiction and impeachment of witness.
5. Evidence.
6. Instructions.
7. Punishment for contempt.
8. Judgment.

1. Examination and cross-examination in general.

A trial court did not err in refusing to permit cross-examination of a witness concerning her use of marijuana and involvement in a robbery since specific instances of conduct may be used to attack the credibility of a witness on cross-examination only if probative of truthfulness or untruthfulness, and neither robbery nor marijuana use were probative of the witness' character for truthfulness or untruthfulness. Johnston v. State, 618 So. 2d 90, 1993 Miss. LEXIS 181 (Miss. 1993).

At a hearing on a former wife's petition to hold her former husband in contempt for failure to pay child support, the wife could not invoke her right against self-incrimination to shield herself from questions on cross-examination as to whether she maintained that the husband had an account at a particular bank, where the wife had voluntarily taken the stand on direct examination and unequivocally identified the signature on the bank account as the husband's. A party may not testify as to material facts in proceedings which he or she initiated, and later invoke the privilege against self-incrimination on those same matters. Thus, when the wife voluntarily took the stand and testified to material matters on direct examination, she also waived her right against self-incrimination. Wallace v. Jones, 572 So. 2d 371, 1990 Miss. LEXIS 565 (Miss. 1990).

Although a judge has wide discretionary control over the extent of cross-examination, the arbitrary curtailment upon a proper subject of cross-examination may be grounds for reversal. Thus, denial of a defendant's right to a broad and extensive cross-examination of a prosecution witness substantially affected the defendant's rights where the prosecution's evidence was largely circumstantial, with the exception of that witness. Sayles v. State, 552 So. 2d 1383, 1989 Miss. LEXIS 472 (Miss. 1989).

A defendant should have been permitted to cross-examine a prosecution witness as to an alleged affair between the defendant and the witness' wife, even though the affair took place approximately 2 to 5 years prior to the trial; it was still likely that the witness could or would have a grudge against the defendant, and this question should have been determined by the jury. Sayles v. State, 552 So. 2d 1383, 1989 Miss. LEXIS 472 (Miss. 1989).

Bias of mother, who had not testified at trial, was not allowed to be established, although bias, motive, or interest are always material and may be proven by extrinsic evidence, because fact that mother, standing alone, had extreme bias and motive to lie was too remote to impeach credibility of children. Cantrell v. State, 507 So. 2d 325, 1987 Miss. LEXIS 2478 (Miss. 1987).

When witness voluntarily took the stand in a perjury trial and testified on behalf of the defendant therein as to the truthfulness of witness' brother's statements concerning a murder, to which witness had pled guilty and had been sentenced, witness waived his Fifth Amendment right and was subject to cross-examination on all relevant and material matters. Hentz v. State, 496 So. 2d 668, 1986 Miss. LEXIS 2712 (Miss. 1986).

Requiring witness, who had already pled guilty to the murder, to answer questions concerning that murder did not expose witness to prosecution for the murder and did not infringe upon his Fifth Amendment rights, where the witness' petition for writ of habeas corpus or, in the alternative, petition to withdraw his guilty plea, came months after the term of court expired wherein he had pled and sentence had been entered. Hentz v. State, 496 So. 2d 668, 1986 Miss. LEXIS 2712 (Miss. 1986).

In prosecution for false pretenses by delivery of a bad check, it was not error for the state to cross-examine a witness who had once been married to defendant and to whom defendant had been furnishing child support. Parker v. State, 484 So. 2d 1033, 1986 Miss. LEXIS 2756 (Miss. 1986).

Code 1942 § 2120 [Code 1972 § 13-1-13] does not permit the cross examination of an official charged with embezzlement as to censures by a grand jury. Interior Contractors, Inc. v. Western Waterproofing Co., 233 So. 2d 829, 1970 Miss. LEXIS 1687 (Miss. 1970).

Where the accused had taken the stand as a witness in a prosecution for unlawful possession of a slot machine, he could not complain of being asked whether he had ever sold intoxicating liquor at his place of business wherein the slot machine was found. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

Where the accused took the stand in prosecution for assault and battery and testified as a witness he necessarily placed his veracity at issue and this justified the state in attacking this veracity. Ables v. State, 223 Miss. 770, 79 So. 2d 241, 1955 Miss. LEXIS 437 (Miss. 1955).

It is only by virtue of this section [Code 1942, § 1693] that defendant's conviction of former offenses could be inquired into on his cross-examination, and the statute must be strictly construed in favor of defendant. Berry v. State, 212 Miss. 164, 54 So. 2d 222, 1951 Miss. LEXIS 438 (Miss. 1951).

No witness is exempt from right of fair cross-examination. Mississippi Ice & Utilities Co. v. Pearce, 161 Miss. 252, 134 So. 164, 1931 Miss. LEXIS 244 (Miss. 1931).

2. Interest in cause.

Letters written by defendant to relatives and page from manuscript of book about defendant's life, which expressed defendant's hostile views toward blacks and civil rights leaders and proclaimed his involvement in the Ku Klux Klan, were relevant to establish defendant's motive for killing black leader of civil rights organization, and more probative on such issue than prejudicial, especially as there was no evidence that defendant had ever met victim. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Testimony of federal agency informant who infiltrated Ku Klux Klan that defendant, a Klan member, discussed "selective killings" as a "partial solution to the right wing's problem," and then said that "he would never ask anyone to do anything that he hadn't already done himself," was relevant to show that defendant had violent tendencies towards his perceived political and social enemies, and therefore, testimony was admissible in prosecution for murder of black leader of civil rights organization. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Impeachment of former police officer through use of officer's grand jury testimony was not error in murder prosecution; grand jury testimony was transcribed from tape recording, the transcript was provided to the defense, and the tape recording was offered to the defense. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Trial court improperly limited defendant's right to testify and to cross-examine and impeach certain witnesses; trial court did not allow defendant to cross-examine co-indictee concerning his interest and bias in case by showing threats co-indictee made against defendant's other witnesses; defendant also was prevented from questioning co-indictee regarding possible promises of leniency from prosecution in return for his testimony against defendant; trial court also improperly denied defendant opportunity to present witness to impeach co-indictee's denial of threats against potential witnesses for defendant, on basis that proper predicate had not been laid for impeachment, where co-indictee had been asked if he threatened witness and he denied it; moreover, trial court sustained objections during co-indictee's questioning which for all practical purposes prevented laying of full and proper predicate. Hill v. State, 512 So. 2d 883, 1987 Miss. LEXIS 2782 (Miss. 1987).

Counsel is not precluded from seeking in good faith on cross-examination to elicit interest, bias, or prejudice of witness because his answer may reveal that liability insurance company is interested. Mississippi Ice & Utilities Co. v. Pearce, 161 Miss. 252, 134 So. 164, 1931 Miss. LEXIS 244 (Miss. 1931).

3. Conviction of crime.

In a prosecution for sexual battery, the trial court should have granted the defendant's motion in limine to preclude admission, for impeachment use pursuant to Rule 609, Miss. R. Ev., of his prior conviction of touching a child for lustful purposes, even though a social worker testified that a general characteristic of pedophiles is an inability to be truthful, since admission of the prior conviction would have been manifestly prejudicial and mere reference to the conviction during the trial would have prejudiced the jury irreparably. Hopkins v. State, 639 So. 2d 1247, 1993 Miss. LEXIS 486 (Miss. 1993).

A prior arson conviction might be admissible for impeachment purposes as a crime involving dishonesty or false statement in situations, for example, where the defendant burned a building as part of a scheme to defraud an insurance company. However, where an arson conviction was admitted for impeachment purposes and the prosecution failed to offer prima facie evidence that the arson involved fraud, dishonesty, false statement or other elements suggesting a propensity for lying, the case would be reversed and remanded for a new trial on all issues. McInnis v. State, 527 So. 2d 84, 1988 Miss. LEXIS 248 (Miss. 1988), overruled in part, White v. State, 785 So. 2d 1059, 2001 Miss. LEXIS 44 (Miss. 2001).

The decision whether to give an advance ruling on the admissibility of prior convictions for impeachment purposes is discretionary with the trial judge. McInnis v. State, 527 So. 2d 84, 1988 Miss. LEXIS 248 (Miss. 1988), overruled in part, White v. State, 785 So. 2d 1059, 2001 Miss. LEXIS 44 (Miss. 2001).

In ruling on the admissibility of a prior conviction for impeachment purposes, a trial judge must make a determination that the probative value outweighs the prejudicial effect of the evidence on the record, and should articulate the reasons for his findings. As a framework for articulating the court's determination on the record, the judge should consider the impeachment value of the crime, the point in time of the conviction and the witness's subsequent history, the similarity of the past crime and the charged crime, the importance of the defendant's testimony, and the centrality of the credibility issue. Johnson v. State, 525 So. 2d 809, 1988 Miss. LEXIS 238 (Miss. 1988).

Prosecutor's question concerning prior conviction, asking whether that crime had involved breaking "in on a little 12-year old girl," was improper because, while accused who has taken stand on his own behalf may be questioned regarding previous convictions, defendant may not be asked to divulge any details of convictions including whether or not he served time for conviction; asking of question did not constitute reversible error, because upon defense objection, jury was instructed to ignore question and this admonition came before defendant could answer. Williams v. State, 512 So. 2d 666, 1987 Miss. LEXIS 2645 (Miss. 1987).

Police officer who arrests suspect may testify as subsequent trial that arrest was made pursuant to outstanding arrest warrant, where no mention is made of charges upon which warrant is based. Brown v. State, 483 So. 2d 328, 1986 Miss. LEXIS 2372 (Miss. 1986).

Criminal defendant is entitled to cross-examine witnesses upon whom state relies heavily regarding pending criminal charges against witnesses, notwithstanding lack of evidence of bargain between state and witnesses. Hall v. State, 476 So. 2d 26, 1985 Miss. LEXIS 2253 (Miss. 1985).

Defendant charged with armed robbery is denied fair trial by introduction of detail surrounding prior conviction and evidence of other crimes not resulting in convictions; error may be raised on appeal notwithstanding defendant's failure to object at time of trial where development of inadmissible detail is lengthy and repetitious. Gallion v. State, 469 So. 2d 1247, 1985 Miss. LEXIS 2096 (Miss. 1985).

Prosecutor may not impeach witness by showing that witness' relatives or acquaintances have prior convictions. Acevedo v. State, 467 So. 2d 220, 1985 Miss. LEXIS 2018 (Miss. 1985).

In a prosecution for burglary, defendant was not entitled to a mistrial based on the prosecution's failure to prove, by extrinsic evidence the prior convictions of a witness that the prosecution had attempted to introduce to impeach the witness, where the witness either denied or claimed not to remember a number of the incidents referred to, the witness was questioned about 12 specific prior criminal convictions for impeachment purposes, the prosecution recited dates and crimes, no objection to the method of impeachment was made by the defendant, and where defendant's attorney questioned the witness and then rested. Cummings v. State, 465 So. 2d 993, 1985 Miss. LEXIS 1847 (Miss. 1985).

When prosecution questions, for impeachment purposes, defense witness about specific prior criminal convictions, reciting dates and crimes, and no objection to method of impeachment is made, defendant may not obtain mistrial on basis of assertion that state has failed to prove prior convictions by extrinsic evidence. Cummings v. State, 465 So. 2d 993, 1985 Miss. LEXIS 1847 (Miss. 1985).

Limitation in § 99-19-101 on use in sentencing phase of capital case of prior convictions for purpose of establishing aggravating circumstances in no way alters established rule of evidence (§ 13-1-13) under which defendant who testifies may have credibility impeached by prior convictions, whether misdemeanors or felonies. Mhoon v. State, 464 So. 2d 77, 1985 Miss. LEXIS 1904 (Miss. 1985), limited, Dotson v. Mississippi (Miss. Ct. App. 1996).

Where a witness does not deny a previous conviction but states that he cannot recall the conviction, evidence of the prior conviction may be introduced under § 13-1-13. Lovelace v. State, 410 So. 2d 876, 1982 Miss. LEXIS 1875 (Miss. 1982).

Where the defendant took the stand in his own defense, the district attorney had a right to cross-examine him as to his previous criminal convictions. Thornton v. State, 313 So. 2d 16, 1975 Miss. LEXIS 1662 (Miss. 1975).

Evidence of a previous conviction, based on a plea of nolo contendere, is not admissible in another case. Dependents of Veasley v. Attala Co., 312 So. 2d 7, 1975 Miss. LEXIS 1634 (Miss. 1975).

Trial court erred in refusing to allow the defense counsel to ask a prosecution witness if he had ever been convicted of a crime or misdemeanor, and such error was not harmless as the credibility of the witness was the real issue for the jury to determine in the case. Baker v. State, 307 So. 2d 545, 1975 Miss. LEXIS 1819 (Miss. 1975), but see Bevill v. State, 556 So. 2d 699, 1990 Miss. LEXIS 27 (Miss. 1990).

Although the defendant admitted on direct examination that he had been previously convicted of a crime this did not foreclose the prosecution from cross-examining him on this point. Wells v. State, 288 So. 2d 860, 1974 Miss. LEXIS 1877 (Miss. 1974).

It is proper to impeach a witness by showing previous conviction of crimes. Clanton v. State, 279 So. 2d 599, 1973 Miss. LEXIS 1470 (Miss. 1973).

Nothing less than a final judgment, conclusively establishing guilt, will satisfy the meaning of the word "conviction" as used in Code 1942, § 1693. Murphree v. Hudnall, 278 So. 2d 427, 1973 Miss. LEXIS 1441 (Miss. 1973).

Examination of defendant as to other crimes must be limited to convictions and even then the details of the crime cannot be inquired into. Allison v. State, 274 So. 2d 678, 1973 Miss. LEXIS 1609 (Miss. 1973).

Even if defendant's reputation for peace and violence was properly put in issue when defense counsel in effect inquired into the reputation of the defendant, nevertheless the district attorney went too far a field in attempting to contradict the testimony as to the good reputation of the defendant for peace and violence and to bring out details of crimes for which defendant had not even been indicted, such as 4 other assaults, an incident in which defendant allegedly killed a man, and an incident in which he also killed a baby with a stray shot. Allison v. State, 274 So. 2d 678, 1973 Miss. LEXIS 1609 (Miss. 1973).

In view of the provision in Code 1942, § 8280 to the effect that a person convicted of a traffic offense cannot have his credibility impeached for convictions of such offenses as speeding, driving without proper driver's license and the like, a person convicted of such offenses cannot be examined with respect thereto under earlier § 1693. Jones v. State, 268 So. 2d 348, 1972 Miss. LEXIS 1198 (Miss. 1972).

The right to cross-examine a defendant with reference to his former convictions in order to impeach or discredit his testimony is limited to the fact that the defendant was convicted and does not include the right to go into the details of the former crime, nor into the punishment given as a result of the conviction. Murray v. State, 266 So. 2d 139, 1972 Miss. LEXIS 1388 (Miss. 1972), cert. denied, 411 U.S. 907, 93 S. Ct. 1534, 36 L. Ed. 2d 196, 1973 U.S. LEXIS 2937 (U.S. 1973).

Where, after the defendant had admitted one previous conviction, and the prosecutor had inferred that the defendant had been absent without official leave and had been convicted of crimes in three different states, the prosecutor responded to the defense statement that if the prosecution had any evidence of other convictions they should produce it in the proper manner, replied before the jury, "I will be glad to produce it," without thereafter producing a scintilla of evidence of other convictions, prejudicial error was committed. Johns v. State, 255 So. 2d 322, 1971 Miss. LEXIS 1287 (Miss. 1971).

Under this section [Code 1942, § 1693] the state may show that the defendant had been convicted of criminal offenses for the purpose of discrediting him as a witness, provided that the details of the same are not given. Benedetti v. State, 249 So. 2d 671, 1971 Miss. LEXIS 1179 (Miss. 1971).

In a prosecution of a justice of the peace for embezzlement, the district attorney's cross-examination of the defendant as to the number of times he had been criticized by the grand jury constituted reversible error, since, while the section [Code 1942, § 1693] permits a cross-examination of a defendant as to convictions, it never permits cross-examination as to indictments and certainly not as to censures by the grand jury, which are hearsay in nature and can only be enlisted for the purpose of degrading and prejudicing the defendant in the eyes of the jury. Interior Contractors, Inc. v. Western Waterproofing Co., 233 So. 2d 829, 1970 Miss. LEXIS 1687 (Miss. 1970).

While the district attorney is not permitted to question a defendant about details of prior convictions, where a defendant in response to a question as to prior convictions, testified that he had been convicted of traffic violations and burglary, and that he had been sentenced to the penitentiary and had been released on parole, the district attorney was authorized, by this section [Code 1942, § 1693], to cross-examine the defendant about former offenses not mentioned on direct testimony, which questioning did not extend to details of convictions. Mangrum v. State, 232 So. 2d 703, 1970 Miss. LEXIS 1634 (Miss. 1970).

Exclusion of certificates of conviction of adverse witnesses is not error where they admit having been convicted. Matthews v. State, 243 Miss. 568, 139 So. 2d 386, 1962 Miss. LEXIS 377 (Miss. 1962).

A witness may be questioned only as to conviction, and not as to whether he has been indicted. Statham v. Blaine, 234 Miss. 649, 107 So. 2d 93, 1959 Miss. LEXIS 575 (Miss. 1959).

Where the accused took the stand as a witness in a prosecution for second degree arson, he thereby subjected himself to cross-examination, and made competent his own testimony, or any other admissible evidence, tending to establish his former conviction of crimes. Dorroh v. State, 229 Miss. 315, 90 So. 2d 653, 1956 Miss. LEXIS 611 (Miss. 1956).

Questions to accused concerning his prior convictions were proper under this section [Code 1942, § 1693]. Jones v. State, 228 Miss. 458, 88 So. 2d 91, 1956 Miss. LEXIS 534 (Miss. 1956).

Error of the lower court in permitting the district attorney in prosecution for murder, over objection, to cross-examine the accused in regard to convictions while in the military service and in regard to the type of discharge he received from the military service, was harmless inasmuch as the accused freely and voluntarily confessed to a state of facts making out a clear case of murder and no question was raised in the record as to the confession not being entirely free and voluntary. McNair v. Mississippi, 223 Miss. 83, 77 So. 2d 306, 1955 Miss. LEXIS 356 (Miss. 1955).

In an action by a passenger against an owner of a taxicab for personal injuries, questions as to indictments pending against the passenger would have been improper. Garraga v. Yellow Cab Co., 222 Miss. 739, 77 So. 2d 276, 1955 Miss. LEXIS 658 (Miss. 1955).

In an action by a passenger against owner of a taxicab for injuries sustained where passenger fell out of a moving cab, it was proper cross-examination to ask passenger of convictions for violations of internal revenue laws. Garraga v. Yellow Cab Co., 222 Miss. 739, 77 So. 2d 276, 1955 Miss. LEXIS 658 (Miss. 1955).

At common law a person convicted of most felonies was disqualified as a witness, but the statute removes this disqualification and conviction now may be used to impeach his credibility. Wetzel v. State, 225 Miss. 450, 76 So. 2d 188, 76 So. 2d 194, 76 So. 2d 846, 78 So. 2d 774, 84 So. 2d 429, 1954 Miss. LEXIS 607, 1954 Miss. LEXIS 608, 1955 Miss. LEXIS 601, 1955 Miss. LEXIS 602, 1956 Miss. LEXIS 396, 1957 Miss. LEXIS 583 (Miss. 1957).

In prosecution for murder where the defendant made no objection to prosecutor's cross-examination of five defense witnesses concerning prior conviction, except as to one question asked the defendant, and that objection was properly sustained and where appellant made no motion for a mistrial, even if there was an error in cross-examination the accused failed to preserve that point on appeal. Wetzel v. State, 225 Miss. 450, 76 So. 2d 188, 76 So. 2d 194, 76 So. 2d 846, 78 So. 2d 774, 84 So. 2d 429, 1954 Miss. LEXIS 607, 1954 Miss. LEXIS 608, 1955 Miss. LEXIS 601, 1955 Miss. LEXIS 602, 1956 Miss. LEXIS 396, 1957 Miss. LEXIS 583 (Miss. 1957).

Examination of a witness touching his conviction of a crime may extend to misdemeanors as well as to infamous crimes and the record of conviction of a misdemeanor is admissible to impeach the veracity of a witness. Breland v. State, 221 Miss. 371, 73 So. 2d 267, 1954 Miss. LEXIS 547 (Miss. 1954).

In a prosecution for unlawful sale of intoxicating liquors, where the accused denied that he was ever convicted of a crime, it was an error to allow admission in evidence of a justice of peace court docket which showed only that the accused was charged with a crime. Breland v. State, 221 Miss. 371, 73 So. 2d 267, 1954 Miss. LEXIS 547 (Miss. 1954).

This section [Code 1942, § 1693] permits a witness to be examined only concerning his conviction of a crime and not concerning its details. Smith v. State, 217 Miss. 123, 63 So. 2d 557, 1953 Miss. LEXIS 416 (Miss. 1953).

In prosecution for assault and battery with intent to kill, defendant's prior conviction of drunkenness was competent evidence against him when both sides, without objection, entered upon proof of fact whether he was drunk or drinking on night of crime, and defendant took stand as witness, as his prior conviction of crime was competent as bearing upon weight of his testimony and his credibility as witness. Phillips v. State, 43 So. 2d 208 (Miss. 1949).

It is competent for state to question defendant in criminal prosecution in regard to previous convictions of crime when accused has taken witness stand in his own behalf. Scarbrough v. State, 204 Miss. 487, 37 So. 2d 748, 1948 Miss. LEXIS 383 (Miss. 1948).

In criminal prosecution, it is not competent for state, in presenting its case in chief, to prove that defendant has been convicted or is guilty of other crimes wholly disconnected with, and having no direct bearing on, case under investigation. Scarbrough v. State, 204 Miss. 487, 37 So. 2d 748, 1948 Miss. LEXIS 383 (Miss. 1948).

Where the defendant on trial for burglary, in answer to a question on direct examination, stated that he had previously been convicted of wilful trespass, it was prejudicial error for the prosecuting attorney to make further inquiries for the purpose of showing that the conviction had followed withdrawal of a plea of guilty to a greater offense, wholly disconnected with the charge on which defendant was being tried. White v. State, 201 Miss. 556, 29 So. 2d 650, 1947 Miss. LEXIS 419 (Miss. 1947).

Under this section [Code 1942, § 1693], if the defendant, in a murder prosecution, offers himself as a witness, then proof of the fact that he has been previously convicted of a crime, but not the extent of the punishment imposed, would be competent to affect his credibility as a witness. Hartfield v. State, 186 Miss. 75, 189 So. 530, 1939 Miss. LEXIS 220 (Miss. 1939).

Admission, on cross-examination, by party jointly indicted with defendant that, in addition to crime for which he and defendant were being tried, there were indictments pending against him for other offenses, held reversible error where he had not been convicted of those offenses. Graham v. State, 179 So. 340 (Miss. 1938).

Where defendant on cross-examination admitted previous conviction of grand larceny, fact that jurors were informed by further cross-examination that defendant had served penitentiary term held not to warrant reversal. Roney v. State, 167 Miss. 532, 142 So. 475, 1932 Miss. LEXIS 196 (Miss. 1932).

Statute authorizing examination of witness regarding conviction does not permit details of crime to be shown. Walker v. State, 151 Miss. 862, 119 So. 796, 1929 Miss. LEXIS 248 (Miss. 1929).

Witness may be cross-examined as to any and all convictions of crime affecting credibility. Brown v. State, 96 Miss. 534, 51 So. 273, 1910 Miss. LEXIS 168 (Miss. 1910).

Proper to ask one accused of assault with intent to murder if he had been convicted of crime, but not, if he had been confined in penitentiary for cutting white man's throat. Dodds v. State, 45 So. 863 (Miss. 1908).

Error to ask witness if he had ever been charged with committing an offense; statute allows only question as to conviction. Starling v. State, 89 Miss. 328, 42 So. 798, 1906 Miss. LEXIS 82 (Miss. 1906); McClelland v. State, 98 Miss. 735, 54 So. 251, 1910 Miss. LEXIS 120 (Miss. 1910).

The examination of witnesses may extend to misdemeanors as well as to infamous crimes. Lewis v. State, 85 Miss. 35, 37 So. 497, 1904 Miss. LEXIS 129 (Miss. 1904).

4. Contradiction and impeachment of witness.

Defendant was properly precluded from giving impeachment testimony about taped conversations in which state witness allegedly said that district attorney's office was threatening to revoke probation if he did not testify, where defendant did not tell counsel about conversations until after witness had been excused, thus preventing the laying of proper predicate for impeachment testimony, where defendant made no objection to release of witness, and where defense counsel did not reveal existence of tape pursuant to discovery requirements when trial commenced the next day, but waited until defendant's testimony to try to elicit that information. (Per Smith, Justice, with three Justices concurring). Harris v. State, 704 So. 2d 1286, 1997 Miss. LEXIS 47 (Miss.), cert. denied, 522 U.S. 827, 118 S. Ct. 90, 139 L. Ed. 2d 47, 1997 U.S. LEXIS 4857 (U.S. 1997).

A trial judge properly excluded evidence of a state witness' refusal to talk to defense counsel prior to trial as irrelevant. The witness' refusal to talk to the attorney was not indicative of a lack of veracity and was not relevant to credibility. Sayles v. State, 552 So. 2d 1383, 1989 Miss. LEXIS 472 (Miss. 1989).

The manufacture, possession or transportation of untaxed liquor is a crime involving dishonesty or false statement under Rule 609(a)(2), Miss. R. Ev., which permits impeachment of a witness' testimony by evidence of conviction of such a crime. Johnson v. State, 529 So. 2d 577, 1988 Miss. LEXIS 272 (Miss. 1988).

Trial court improperly limited defendant's right to testify and to cross-examine and impeach certain witnesses; trial court did not allow defendant to cross-examine co-indictee concerning his interest and bias in case by showing threats co-indictee made against defendant's other witnesses; defendant also was prevented from questioning co-indictee regarding possible promises of leniency from prosecution in return for his testimony against defendant; trial court also improperly denied defendant opportunity to present witness to impeach co-indictee's denial of threats against potential witnesses for defendant, on basis that proper predicate had not been laid for impeachment, where co-indictee had been asked if he threatened witness and he denied it; moreover, trial court sustained objections during co-indictee's questioning which for all practical purposes prevented laying of full and proper predicate. Hill v. State, 512 So. 2d 883, 1987 Miss. LEXIS 2782 (Miss. 1987).

Where defendant did not testify at the guilt stage of his murder trial, evidence that defendant was on parole was not admissible for the purpose of impeaching his testimony under this section. Gray v. State, 351 So. 2d 1342, 1977 Miss. LEXIS 1951 (Miss. 1977).

Plea of guilty being tantamount to a conviction for purposes of this statute, the credibility as a witness of defendant in a burglary prosecution could properly be impeached by evidence of his prior plea of guilty in an out of state prosecution for forgery, even though sentence had not been imposed and final judgment had not been entered on that plea. Bridges v. State, 336 So. 2d 1309, 1976 Miss. LEXIS 1554 (Miss. 1976).

In seeking to impeach a prosecution witness, defense counsel could not question the witness as to mere charges of the commission of offenses, especially where such charges were pending and the witness's testimony might incriminate him. Further, the witness could not be asked nor proof made of the details of an alleged crime said to have been committed by the witness sought to be impeached. Haralson v. State, 314 So. 2d 722, 1975 Miss. LEXIS 1682 (Miss. 1975).

If a defendant denies a former conviction he may be contradicted by the record of such conviction and such evidence goes only to the credibility of the witness. Berry v. State, 212 Miss. 164, 54 So. 2d 222, 1951 Miss. LEXIS 438 (Miss. 1951).

Where witness is sought to be impeached on ground of conviction, details of crime are not admissible, and he cannot be examined as to such details; only fact of conviction is admissible; in seeking to impeach credibility of accused it was error to ask if he had not been convicted of beating wife and child and to contradict denial. Powers v. State, 156 Miss. 316, 126 So. 12, 1930 Miss. LEXIS 173 (Miss. 1930).

Permitting state in murder prosecution to cross-examine husband of deceased as to statements relative to getting divorce and to contradict such testimony in rebuttal held proper. Hardy v. State, 143 Miss. 352, 108 So. 727, 1926 Miss. LEXIS 272 (Miss. 1926).

Person jointly indicted with accused, not on trial but testifying for accused, may be impeached by contradictory statement made by him as to commission of offense. Pickett v. State, 139 Miss. 529, 104 So. 358, 1925 Miss. LEXIS 174 (Miss. 1925).

5. Evidence.

Defendant could present evidence that police officers were biased and prejudiced against him during his direct testimony in armed robbery prosecution, and was not required to show bias during cross-examination of the officers. McLemore v. State, 669 So. 2d 19, 1996 Miss. LEXIS 9 (Miss. 1996).

Before evidence may be received under the other bad acts exception to the primary relevancy rule, the proponent must articulate precisely the evidential hypothesis by which the consequential act may be inferred from the proffered evidence. Houston v. State, 531 So. 2d 598, 1988 Miss. LEXIS 426 (Miss. 1988).

The certified abstract of a court record showing a defendant's prior conviction was competent evidence of such conviction and was not rendered incompetent by the fact that the abstract included the punishment inflicted for the prior offense. Lovelace v. State, 410 So. 2d 876, 1982 Miss. LEXIS 1875 (Miss. 1982).

In a robbery prosecution against a daughter, who had testified that she had grabbed her mother's metal box containing money and a pistol and fled to prevent the mother from obtaining the pistol, evidence that on several occasions the mother had shot at members of the accused's family should have been permitted to go to the jury as tending to show the bias and prejudice of the mother, who was a prosecuting witness, even though it was not part of the res gestae. Hardin v. State, 232 Miss. 470, 99 So. 2d 600, 1958 Miss. LEXIS 294 (Miss. 1958).

Cross examination by district attorney in robbery prosecution of defendant's witness as to number of times sheriff raided his place and concerning his sales of whisky was incompetent but not reversible error. Ivey v. State, 206 Miss. 734, 40 So. 2d 609, 1949 Miss. LEXIS 297 (Miss. 1949).

Conviction of crime admissible to impeach veracity of witness only after he has denied conviction. Alabama & V. R. Co. v. Thornhill, 106 Miss. 387, 63 So. 674, 1913 Miss. LEXIS 146 (Miss. 1913), overruled, New Orleans & G. N. R. Co. v. Walden, 160 Miss. 102, 133 So. 241, 1931 Miss. LEXIS 158 (Miss. 1931).

It is proper under this section [Code 1942, § 1693] to ask a witness on cross-examination if he had not confessed to having been a convict in the penitentiary, and his answer may be contradicted. The record of such conviction is only necessary where the object is to show conviction, but if the witness is asked for the purpose of discrediting him the question is competent without the production of the record. Jackson v. State, 75 Miss. 145, 21 So. 707, 1897 Miss. LEXIS 92 (Miss. 1897).

The record of a conviction of a misdemeanor is admissible. Helm v. State, 67 Miss. 562, 7 So. 487, 1890 Miss. LEXIS 102 (Miss. 1890).

6. Instructions.

Instruction that interest of witness might be considered not error, though defendant's wife was his only witness. Jones v. State, 130 Miss. 703, 94 So. 851, 1922 Miss. LEXIS 243 (Miss. 1922).

7. Punishment for contempt.

While undue delay in imposition of punishment for contempt will not be tolerated, withholding imposition of punishment on witness found guilty of direct criminal contempt until the day following the conclusion of the trial did not constitute undue delay. Hentz v. State, 496 So. 2d 668, 1986 Miss. LEXIS 2712 (Miss. 1986).

8. Judgment.

A judgment which simply stated that witness had been found in contempt 27 times for refusing to answer questions, and had been punished for 6 acts, but did not specify the 6 acts, was not sufficiently clear and explicit to warrant Supreme Court to affirm, annul, reverse, or modify it. Hentz v. State, 496 So. 2d 668, 1986 Miss. LEXIS 2712 (Miss. 1986).

While contempt proceeding is summary and the judge may act upon that which he personally knows is direct contempt, the judgment of conviction should contain material facts constituting the contempt, and, in rendering the judgment and making up the record, the causes for contempt should be separately stated so as to constitute res judicata. Hentz v. State, 496 So. 2d 668, 1986 Miss. LEXIS 2712 (Miss. 1986).

RESEARCH REFERENCES

ALR.

Testifying in civil proceeding as waiver of privilege against self-incrimination. 72 A.L.R.2d 830.

Plea of guilty or conviction as resulting in loss of privilege against self-incrimination as to crime in question. 9 A.L.R.3d 990.

Witness' refusal to testify on ground of self-incrimination as justifying reception of evidence of prior statements or admissions. 43 A.L.R.3d 1413.

Cross-examination of witness as to his mental state or condition, to impeach competency or credibility. 44 A.L.R.3d 1203.

Propriety, on impeaching credibility of witness in civil case by showing former conviction, of questions relating to nature and extent of punishment. 67 A.L.R.3d 761.

Propriety, on impeaching credibility of witness in criminal case by showing former conviction, of questions relating to nature and extent of punishment. 67 A.L.R.3d 775.

Right to impeach credibility of accused

by showing prior conviction, as affected by remoteness in time of prior offense. 67 A.L.R.3d 824.

Right to impeach witness in criminal case by inquiry or evidence as to witness' criminal activity not having resulted in arrest or charge – modern state cases. 24 A.L.R.4th 333.

Use of plea bargain or grant of immunity as improper vouching for credibility of witness – state cases. 58 A.L.R.4th 1229.

Adverse presumption or inference based on party's failure to produce or examine family member other than spouse – modern cases. 80 A.L.R.4th 337.

Adverse presumption or inference based on party's failure to produce or examine witness with employment relationship to party – modern cases. 80 A.L.R.4th 405.

Adverse presumption or inference based on state's failure to produce or examine informant in criminal prosecution – modern cases. 80 A.L.R.4th 547.

Requirement that defendant in state court testify in order to preserve alleged trial error in rulings on admissibility of prior conviction impeachment evidence under Uniform Rule of Evidence 609, or similar provision or holding – post-Luce cases. 80 A.L.R.4th 1028.

Adverse presumption or inference based on state's failure to produce or examine law enforcement personnel – modern cases. 81 A.L.R.4th 872.

Adverse presumption or inference based on party's failure to produce or examine transferor, transferee, broker, or other person allegedly involved in transaction at issue – modern cases. 81 A.L.R.4th 939.

Permissibility of testimony by telephone in state trial. 85 A.L.R.4th 476.

Propriety of using prior conviction for drug dealing to impeach witness in criminal trial. 37 A.L.R.5th 319.

Requirement that court advise accused of, and make inquiry with respect to, waiver of right to testify. 72 A.L.R.5th 403.

Propriety under Rule 403 of the Federal Rules of Evidence, permitting exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time, of attack on credibility of witness for party. 48 A.L.R. Fed. 390.

Am. Jur.

81 Am. Jur. 2d (Rev), Witnesses §§ 743 et seq., 796 et seq.

3 Am. Jur. Proof of Facts, Conviction of Crime, Proof No. 1 (cross-examination concerning previous conviction).

3 Am. Jur. Proof of Facts, Conviction of Crime, Proof No. 2 (introduction of record after denial of previous conviction).

36 Am. Jur. Proof of Facts 2d 747, Impeachment of Witness by Prior Criminal Conviction.

6 Am. Jur. Trials, Cross-Examination of Defendant, §§ 17 et seq.

6 Am. Jur. Trials, Cross-Examination of Plaintiff and Plaintiff's Witnesses, §§ 26 et seq.

CJS.

31A C.J.S., Evidence §§ 891–897, 922.

98 C.J.S., Witnesses §§ 244, 247 et seq.

Law Reviews.

1982 Mississippi Supreme Court Review: Criminal Law and Procedure: Rape. 53 Miss. L. J. 149, March 1983.

§ 13-1-15. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1880, § 1604; 1892, § 1742; 1906, § 1919; Hemingway's 1917, § 1579; 1930, § 1533; 1942, § 1694]

Editor's Notes — Former § 13-1-15 provided that a person shall not be incompetent as a witness because of his religious belief or want of it.

§ 13-1-16. Repealed.

Repealed by Laws of 1984, ch. 414, § 9, eff from and after July 1, 1984.

§ 13-1-16. [En Laws, 1972, ch. 338, § 1]

Editor's Notes — Section 13-1-16 provided for the appointment of interpreters for deaf parties and witnesses and for the payment of fees. Section 13-1-301 et seq. now make provisions for such appointments.

§ 13-1-17. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, Hutchinson's 1848, ch. 60, art. 1 (112); 1857, ch. 61, art. 206; 1871, § 776; 1880, § 1605; 1892, § 1744; 1906, § 1921; Hemingway's 1917, § 1581; 1930, § 1534; 1942, § 1695]

Editor's Notes — Former § 13-1-17 provided for the affirmation of witnesses.

§ 13-1-19. Witness to be committed for refusal to testify.

If any person subpoenaed as a witness in any case or matter, shall refuse to be sworn or affirmed, or to give evidence, he shall be committed to prison by the court, justice, master, commissioner, referee, or other person authorized to take his testimony, there to remain without bail until he shall be sworn or affirmed or shall give his evidence.

HISTORY: Codes, Hutchinson's 1848, ch. 60, art. 1 (108); 1857, ch. 61, art. 207; 1871, § 777; 1880, § 1606; 1892, § 1745; 1906, § 1922; Hemingway's 1917, § 1582; 1930, § 1535; 1942, § 1696.

RESEARCH REFERENCES

ALR.

Refusal to answer questions before state grand jury as direct contempt of court. 69 A.L.R.3d 501.

Impeachment of defense witness in criminal case by showing witness' prior silence or failure or refusal to testify. 20 A.L.R.4th 245.

Right of independent expert to refuse to testify as to expert opinion. Par Indus. v. Target Container Co., 708 So. 2d 44, 1998 Miss. LEXIS 41 (Miss. 1998).

CJS.

98 C.J.S., Witnesses §§ 97–99, 104-115.

§ 13-1-21. Communications privileged; exception.

(1) All communications made to a physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist or chiropractor by a patient under his charge or by one seeking professional advice are hereby declared to be privileged, and such party shall not be required to disclose the same in any legal proceeding except at the instance of the patient or, in case of the death of the patient, at the instance of his personal representative or legal heirs in case there be no personal representative, or except, if the validity of the will of the decedent is in question, at the instance of the personal representative or any of the legal heirs or any contestant or proponent of the will.

(2) Waiver of the medical privilege of patients regarding the release of medical information to health care personnel, the State Board of Health or

local health departments, made to comply with Sections 41-3-15, 41-23-1 and 41-23-2 and related rules, shall be implied. The medical privilege likewise shall be waived to allow any physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist or chiropractor to report to the State Department of Health necessary information regarding any person afflicted with any communicable disease or infected with the causative agent thereof who neglects or refuses to comply with accepted protective measures to prevent the transmission of the communicable disease.

(3) Willful violations of the provisions of this section shall constitute a misdemeanor and shall be punishable as provided for by law. Any physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist, or chiropractor shall be civilly liable for damages for any willful or reckless and wanton acts or omissions constituting such violations.

(4) In any action commenced or claim made after July 1, 1983, against a physician, hospital, hospital employee, osteopath, dentist, nurse, pharmacist, podiatrist, optometrist or chiropractor for professional services rendered or which should have been rendered, the delivery of written notice of such claim or the filing of such an action shall constitute a waiver of the medical privilege and any medical information relevant to the allegation upon which the cause of action or claim is based shall be disclosed upon the request of the defendant, or his or her counsel.

(5) In any disciplinary action commencing on or after July 1, 1987, against a medical physician, an osteopathic physician or a podiatrist pursuant to the provisions of Sections 73-25-1 through 73-25-39, 73-25-51 through 73-25-67, 73-25-81 through 73-25-95 and 73-27-1 through 73-27-19, waiver of the medical privilege of a patient to the extent of any information other than that which would identify the patient shall be implied.

HISTORY: Codes, 1906, § 3695; Hemingway's 1917, § 6380; 1930, § 1536; 1942, § 1697; Laws, 1944, ch. 315; Laws, 1968, ch. 441, § 4; Laws, 1976, ch. 347; Laws, 1979, ch. 408; Laws, 1982, ch. 407; Laws, 1983, ch. 327; Laws, 1987, ch. 500, § 2; Laws, 1988, ch. 557, § 3, eff from and after July 1, 1988.

Cross References — Hospital records not generally constituting public records, see § 41-9-67.

Confidentiality and inspection of hospital records of civilly committed patients, see § 41-21-97.

What constitutes the practice of medicine, see § 73-25-33.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Additional provisions relative to privileged communications, see Miss. R. Evid. 501-505.

JUDICIAL DECISIONS

ANALYSIS

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1. Validity.

This section is constitutional. French Drug Co. v. Jones, 367 So. 2d 431, 1978 Miss. LEXIS 2444 (Miss. 1978).

Privileged communication statute is mere rule of evidence, and so not unconstitutional, though preventing proof by defendant on main issue. Yazoo & M. V. R. Co. v. Decker, 150 Miss. 621, 116 So. 287, 1928 Miss. LEXIS 106 (Miss. 1928).

2. Construction and application generally.

Only privilege established by the clear and unambiguous language of Miss. Code Ann. § 13-1-21 is for communications made to a physician by a patient under his or her charge or by one seeking professional advice; thus, if a court is to be faithful to the statute, it must limit what is privileged thereunder to communications made to a physician by a patient. Franklin Collection Serv. v. Kyle, 955 So. 2d 284, 2007 Miss. LEXIS 234 (Miss. 2007).

In a collection agency's suit brought on an open account against a patient, the patient did not have a counterclaim for breach of a physician-patient privilege when the collection agency attached certain information to its complaint because Miss. Code Ann. § 13-1-21 was too narrow to apply, and there was no privilege for this type of information under the broader Miss. R. Evid. 503. Franklin Collection Serv. v. Kyle, 2007 Miss. LEXIS 11 (Miss. Jan. 11, 2007), sub. op., op. withdrawn, 955 So. 2d 284, 2007 Miss. LEXIS 234 (Miss. 2007).

Although the urinalysis evidence came under the Miss. Code Ann. § 3-1-21(1) physician-patient privilege, defendant could not rely on the privilege to exclude the incriminating evidence of cocaine in defendant's system where the procedure allegedly failed to comply with Miss. Code Ann. § 63-11-19. Jones v. State, 858 So. 2d 139, 2003 Miss. LEXIS 579 (Miss. 2003).

Defendant's conviction for vehicular homicide was affirmed where the appellate court found that a hospital employee's analysis of his urine that showed defendant had cocaine in his system at the time of the fatal accident was properly admitted; to ensure the proper administration of justice, the analysis of defendant's urine specimen was removed from the protection of the physician-patient privilege. Jones v. State, 2002 Miss. App. LEXIS 185 (Miss. Ct. App. Apr. 9, 2002).

Where newborn was accidently taken by hospital staff to the wrong mother to be breast fed, the unidentified patient responsible for breast feeding newborn was a fact witness to the alleged negligence of the hospital; therefore, her identity had to be revealed and her medical records may be inspected by the judge in camera to determine whether the health of the newborn was at risk. Baptist Mem'l Hosp.-Union County v. Johnson, 754 So. 2d 1165, 2000 Miss. LEXIS 5 (Miss. 2000).

Under no circumstances should a court order require plaintiff in medical malpractice or other action to release medical information unconditionally. Scott by & Through Scott v. Flynt, 704 So. 2d 998, 1996 Miss. LEXIS 147 (Miss. 1996).

In cases involving personal injuries, where a plaintiff has, during pretrial discovery, expressly refused to waive the medical privilege provided for under § 13-1-21, the defendant is not entitled to an instruction stating that the fact that the treating physicians were not called as witnesses by the plaintiff would justify an inference that their testimony would have been unfavorable, whether or not defendant subpoenaed them. Jackson v. Brumfield, 458 So. 2d 736, 1984 Miss. LEXIS 1975 (Miss. 1984).

In a prosecution for manslaughter by culpable negligence resulting from an automobile collision, defendant was properly precluded from arguing that the prosecution had failed to prove the results of a blood test for alcohol, since the State in rebuttal could not reply to the defendant's argument by discussing material protected by § 13-1-21, the physician-patient privilege, which defendant had exercised. Alford v. State, 433 So. 2d 940, 1983 Miss. LEXIS 2631 (Miss. 1983).

The testimony of two doctors as to their court-ordered examinations did not violate the physician-patient privilege statute which declared as privileged only those communications made to a physician by a patient under his charge or by one seeking professional advice. United States v. Harper, 450 F.2d 1032, 1971 U.S. App. LEXIS 7450 (5th Cir. Miss. 1971).

The purpose of the physician-patient privilege is to protect the patient by encouraging full and confidential disclosure to his physician of all information, however embarrassing, which might aid the physician in diagnosis and treatment. Hardy v. Riser, 309 F. Supp. 1234, 1970 U.S. Dist. LEXIS 12906 (N.D. Miss. 1970).

In Mississippi the physician-patient privilege arises only when the patient consults the physician in his professional capacity and generally for the purpose of treatment, and it would not apply to a physician appointed by a state court. Hardy v. Riser, 309 F. Supp. 1234, 1970 U.S. Dist. LEXIS 12906 (N.D. Miss. 1970).

To be privileged, physician-patient communications must be in a professional context and generally must be with the purpose of treatment. Hardy v. Riser, 309 F. Supp. 1234, 1970 U.S. Dist. LEXIS 12906 (N.D. Miss. 1970).

Under state law, the examining doctor's testimony is not subject to medical privilege, and by federal standards Rule 35 overrides any conflicting state-created rule, procedural, or substantive, which would bar the testimony of an examining physician appointed by order of federal court. Hardy v. Riser, 309 F. Supp. 1234, 1970 U.S. Dist. LEXIS 12906 (N.D. Miss. 1970).

The physician-patient privilege is substantive for diversity purposes, requiring the application of state substantive law in diversity cases. Hardy v. Riser, 309 F. Supp. 1234, 1970 U.S. Dist. LEXIS 12906 (N.D. Miss. 1970).

Code 1942, § 6998-08 does not prohibit the invocation of the patient-physician communication privilege in proceedings before the Mississippi workmen's compensation commission. Cooper's, Inc. of Mississippi v. Long, 224 So. 2d 866, 1969 Miss. LEXIS 1301 (Miss. 1969).

Under this section [Code 1942, § 1697], a decedent's physician is properly permitted to testify for the proponent of his will. Grant v. Norwood, 248 Miss. 740, 161 So. 2d 189, 1964 Miss. LEXIS 299 (Miss. 1964).

Error in permitting a physician to testify to a privileged communication held harmless, in view of the patient's testimony as to what the doctor prescribed. Pullin v. Nabors, 240 Miss. 864, 128 So. 2d 117, 1961 Miss. LEXIS 518 (Miss. 1961).

A doctor may not be required to testify as to matters learned in treating a patient, where the patient's widow objects. Donaldson v. Life & Casualty Ins. Co., 239 Miss. 635, 124 So. 2d 701, 1960 Miss. LEXIS 333 (Miss. 1960).

The privileged communications statute is no prohibition against the offering of a physician as a witness since the patient may or may not waive the statute. Gulf, M. & O. R. Co. v. Smith, 210 Miss. 768, 50 So. 2d 898, 1951 Miss. LEXIS 312 (Miss. 1951).

The purpose of the privileged communication statute is to protect confidential matters growing out of the relation of physician and his assistants and patient. Life & Casualty Ins. Co. v. Walters, 180 Miss. 384, 177 So. 47, 1937 Miss. LEXIS 112 (Miss. 1937).

The privileged communication statute and statute permitting introduction in evidence of vital statistics records must be construed together. Life & Casualty Ins. Co. v. Walters, 180 Miss. 384, 177 So. 47, 1937 Miss. LEXIS 112 (Miss. 1937).

Statute declaring as privileged communications made to physician by patient or one seeking professional advice must be limited to its language and clear purpose, and should not be extended by construction. Gulf, M. & N. R. Co. v. Willis, 171 Miss. 739, 158 So. 551 (Miss. 1935).

Privileged communication statute is mere rule of evidence. Yazoo & M. V. R. Co. v. Decker, 150 Miss. 621, 116 So. 287, 1928 Miss. LEXIS 106 (Miss. 1928).

State privileged communication statute held mere rule of evidence, applicable in action under Federal Employer's Liability Act. New Orleans & N. E. R. Co. v. Jackson, 145 Miss. 702, 110 So. 586, 1926 Miss. LEXIS 24 (Miss. 1926).

Physician cannot disclose patient's communication except at patient's instance. Hunter v. Hunter, 127 Miss. 683, 90 So. 440, 1921 Miss. LEXIS 271 (Miss. 1921).

3. Persons subject to privilege.

Evidence rule creating psychotherapist-patient privilege defines "psychotherapist" not only by those persons who are licensed, but also by subjective impressions of patient. (Per Pittman, J., with two Justices concurring, two Justices concurring in the result only, and one Justice concurring in part.) Kolberg v. State, 704 So. 2d 1307, 1997 Miss. LEXIS 697 (Miss. 1997).

Patient-psychotherapist relationship and privilege existed between defendant and witness, even though witness was not licensed psychologist, where defendant believed that witness was psychiatrist or psychologist and that anything he told witness was confidential. (Per Pittman, J., with two Justices concurring, two Justices concurring in the result only, and one Justice concurring in part.) Kolberg v. State, 704 So. 2d 1307, 1997 Miss. LEXIS 697 (Miss. 1997).

In a proceeding by a wife seeking a divorce from her husband on the basis of excessive drug use, the physician-patient privilege of § 13-1-21 did not extend to pharmacist-client communications, and thus, testimony of the husband's pharmacist was properly introduced. Ladner v. Ladner, 436 So. 2d 1366, 1983 Miss. LEXIS 2808 (Miss. 1983).

In personal injury action, physician who was partner of physician who treated plaintiff held incompetent to testify concerning plaintiff's condition. Mississippi Power & Light Co. v. Jordan, 164 Miss. 174, 143 So. 483, 1932 Miss. LEXIS 214 (Miss. 1932).

4. —Chiropractor.

Chiropractors are not within privilege of physicians. S. H. Kress & Co. v. Sharp, 156 Miss. 693, 126 So. 650, 1930 Miss. LEXIS 212 (Miss. 1930).

5. —Dentist.

Offer of proof of what was expected to be proved by dentist held insufficient to justify reversal of judgment for patient suing railroad for injuries on ground that dentist's testimony was not privileged, where record did not disclose that dentist's testimony would have contradicted that given by patient or would have mitigated damages awarded by jury. Gulf, M. & N. R. Co. v. Willis, 171 Miss. 739, 158 So. 551 (Miss. 1935).

Dentist is not a "physician" within statute declaring as privileged all communications made to a physician by a patient or by one seeking professional advice. Gulf, M. & N. R. Co. v. Willis, 171 Miss. 739, 158 So. 551 (Miss. 1935).

6. —Nurse.

In action on life policy excluding liability if insured was pregnant at date of policy and death resulted from such pregnancy, student nurse in hospital who prepared room for insured's confinement, and who remained through the confinement, could testify regarding matters observed without violating the privileged communication statute. Life & Casualty Ins. Co. v. Walters, 180 Miss. 384, 177 So. 47, 1937 Miss. LEXIS 112 (Miss. 1937).

Nurse employed by physician who treated plaintiff for injury would be competent as witness as to all matters learned when not assisting physician. Mississippi Power & Light Co. v. Jordan, 164 Miss. 174, 143 So. 483, 1932 Miss. LEXIS 214 (Miss. 1932).

Nurse who was employee of physician who treated plaintiff for injury to leg held incompetent as witness. Mississippi Power & Light Co. v. Jordan, 164 Miss. 174, 143 So. 483, 1932 Miss. LEXIS 214 (Miss. 1932).

Statute, making communications to physician privileged, held not to exclude testimony of nurses employed in hospitals and present when communications were made. Goodman v. Lang, 158 Miss. 204, 130 So. 50, 1930 Miss. LEXIS 16 (Miss. 1930).

7. Persons who may assert privilege.

Testimony of a physician that the defendant informed him that he had a girl "in trouble" and asked whether the doctor could give her something to bring about menstruation, was not privileged, where the doctor specifically declined to have anything to do with the matter and never saw or had any communication with the prosecutrix, the relation of physician and patient never existing between any of the persons involved. Smith v. State, 188 Miss. 339, 194 So. 922, 1940 Miss. LEXIS 34 (Miss. 1940).

The privilege conferred by the statute regarding communications between physician and patient is for the benefit of the patient alone, so that the testimony of a physician offered by the state in a criminal case to show that the wound suffered by a bystander was caused by the pistol of the accused, even if it was error to admit such testimony over the objection of such bystander, could not be complained of by the accused. Vance v. State, 182 Miss. 840, 183 So. 280, 1938 Miss. LEXIS 200 (Miss. 1938).

8. Matters subject to privilege.

Where an employer noticed that a return to work date on a medical leave form appeared to have been altered and asked the employee's health care provider to provide another copy of the form, which revealed the employee's alteration, the health care provider did not violate the physician-patient privilege under Miss. Code Ann. § 13-1-21 because the privilege only applied to information provided by a patient to his or her doctor, and the employee's return to work date did not qualify as such information. Thornton v. Statcare, PLLC, 988 So. 2d 387, 2008 Miss. App. LEXIS 416 (Miss. Ct. App. 2008).

A physician's knowledge of a patient's deafness, obtained while treating him, is privileged. New Orleans & N. R. Co. v. Shows, 240 Miss. 604, 128 So. 2d 381, 1961 Miss. LEXIS 490 (Miss. 1961).

In matter involving merely conventional relation of physician and patient, as distinguished from matter in which it is necessary for physician to examine into case and apply his skill and knowledge to form an opinion, or to make preliminary preparation for purpose of qualifying himself to give expert testimony, physician is ordinarily subject to testify under subpoena as any other witness. Johns-Mansville Products Corp. v. Cather, 208 Miss. 268, 44 So. 2d 405, 1950 Miss. LEXIS 246 (Miss. 1950).

This section [Code 1942, § 1697] has no application to a situation where one claiming disability benefits under a life insurance policy voluntarily presented himself to a physician employed by the insurance company solely for the purpose of an examination, and not for professional advice or treatment, so as to enable such physician to report the facts he might find to the insurance company; and under such circumstances, the privilege not only did not arise but was also waived. Metropolitan Life Ins. Co. v. Evans, 183 Miss. 859, 183 Miss. 860, 184 So. 426, 1938 Miss. LEXIS 300 (Miss. 1938).

Where defendant, charged with assault and battery with intent to kill, testified that she acted in self-defense, having been assaulted by another who beat defendant over head, inflicting wounds treated by physician, physician's testimony that he had not treated a wound on defendant's head held admissible. Sproles v. State, 176 Miss. 810, 170 So. 293, 1936 Miss. LEXIS 171 (Miss. 1936).

In murder prosecution, admitting testimony of physician, who attended deceased, with reference to nature and effects of wound found upon body of deceased, held not reversible error. Maddox v. State, 173 Miss. 799, 163 So. 449, 1935 Miss. LEXIS 258 (Miss. 1935).

In action for death, communications made by decedent to his physician about a year before his death held privileged. Illinois C. R. Co. v. Humphries, 170 Miss. 840, 155 So. 421, 1934 Miss. LEXIS 174 (Miss. 1934).

Physician who treated plaintiff for former injury to leg held incompetent as witness, where such physician could not segregate knowledge acquired as physician from that learned from contact and association. Mississippi Power & Light Co. v. Jordan, 164 Miss. 174, 143 So. 483, 1932 Miss. LEXIS 214 (Miss. 1932).

Nurse employed by physician who treated plaintiff for injury would be competent as witness as to all matters learned when not assisting physician. Mississippi Power & Light Co. v. Jordan, 164 Miss. 174, 143 So. 483, 1932 Miss. LEXIS 214 (Miss. 1932).

Where physician investigates by direction of court or prosecuting attorney to ascertain condition of person for purposes of trial, statutory privilege does not arise. Norwood v. State, 158 Miss. 550, 130 So. 733, 1930 Miss. LEXIS 82 (Miss. 1930).

Where person is examined by physician at instance or with approval of officers for purpose of law enforcement, and person examined knows, or facts reasonably give knowledge, that examination is for such purpose and no wrongful means are used, statute relating to privilege is not available. Norwood v. State, 158 Miss. 550, 130 So. 733, 1930 Miss. LEXIS 82 (Miss. 1930).

Testimony of physician treating insured as to nature and character of disease is inadmissible. Provident Life & Acci. Ins. Co. v. Jemison, 153 Miss. 53, 120 So. 180, 1929 Miss. LEXIS 3 (Miss. 1929).

What physician knows about patient by physical examination held privileged communication. Yazoo & M. V. R. Co. v. Decker, 150 Miss. 621, 116 So. 287, 1928 Miss. LEXIS 106 (Miss. 1928).

Testimony of physician treating insured, together with hospital records, held properly excluded in beneficiary's action on policy after insured's death. Metropolitan Life Ins. Co. v. McSwain, 149 Miss. 455, 115 So. 555, 1928 Miss. LEXIS 41 (Miss. 1928).

In trial of unlawful killing admitting testimony of physician, who attended deceased, with reference to condition of his wound, held not reversible error. Davenport v. State, 143 Miss. 121, 108 So. 433, 1926 Miss. LEXIS 250 (Miss. 1926).

Physician cannot disclose deceased patient's communication. Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926).

Physician not competent to testify as to the facts and information received by him in professional capacity; physician competent to testify as to knowledge concerning mental condition derived from social or business relation; trial judge may determine competency of physician's knowledge derived partly from his relation as physician and partly from social and business relations. Dabbs v. Richardson, 137 Miss. 789, 102 So. 769, 1925 Miss. LEXIS 20 (Miss. 1925).

Physician held not precluded from giving non-expert testimony as to facts and circumstances affecting testamentary capacity of patient, based on conversation derived from business and social relations. Estes v. McGehee, 133 Miss. 174, 97 So. 530, 1923 Miss. LEXIS 122 (Miss. 1923).

In action against railway company for wrongful death, erroneous to permit defendant to prove by decedent's physician that injuries sustained were not cause of death. Hamel v. Southern R. Co., 113 Miss. 344, 74 So. 276, 1917 Miss. LEXIS 108 (Miss. 1917).

Word "communication" includes matters ascertained by railroad surgeon in examination of persons injured in wreck; communications need not be in words. Yazoo & M. V. R. Co. v. Messina, 109 Miss. 143, 67 So. 963, 1915 Miss. LEXIS 127 (Miss. 1915), rev'd, 240 U.S. 395, 36 S. Ct. 368, 60 L. Ed. 709, 1916 U.S. LEXIS 1461 (U.S. 1916).

9. —X-rays.

Privileged communication statute held not to prevent physical and X-ray examination of parts of plaintiff's body which were alleged to have been injured and which were voluntarily exhibited to jury for inspection and examination. Dixie Greyhound Lines, Inc. v. Matthews, 177 Miss. 103, 170 So. 686, 1936 Miss. LEXIS 254 (Miss. 1936).

10. —Hospital and other records.

Without the results of defendant's urine specimen and test, which specimen was taken and which test was performed by a hospital according to its policy, the State would have been unable to prove that defendant was under the influence of cocaine when defendant collided with the victim's automobile; thus, to ensure the proper administration of justice, the medical records regarding the analysis of defendant's urine specimen had to be removed from the protection of the physician-patient privilege under Miss. Code Ann. § 13-1-21(1) and Miss. R. Evid. 503(b) and the trial court did not err in admitting this evidence. Jones v. State, 881 So. 2d 209, 2002 Miss. App. LEXIS 869 (Miss. Ct. App. 2002), aff'd, 2003 Miss. LEXIS 588 (Miss. Oct. 30, 2003).

In light of the highly personal nature of a patient's medical and hospital records and of the problems that could result from their improper release, a hospital properly refused to reproduce and release voluminous patient records when it received only a form request and offer to pay for "reasonable access"; a reasonable response would be to allow access if representatives of the requesting facility appeared personally at the hospital, checked the records, and indicated those for which they would be willing to pay for copies. Young v. Madison General Hospital, 337 So. 2d 931, 1976 Miss. LEXIS 1600 (Miss. 1976).

The privileged communications statute does not preclude testimony from and concerning a patient's hospital records, by doctors who had never seen or examined the patient. Reynolds v. West, 237 Miss. 613, 115 So. 2d 742, 1959 Miss. LEXIS 511 (Miss. 1959).

In action on life policy excluding liability if insured was pregnant at date of policy and death resulted from such pregnancy, certified copies of vital statistics, records, consisting of insured's attending physician's reports to the department of vital statistics showing required facts with reference to death of the insured and birth of child, were admissible, since, by adoption of statute permitting introduction of records of vital statistics, legislature intended to except from operation of the privileged communications statute the vital statistics records. Life & Casualty Ins. Co. v. Walters, 180 Miss. 384, 177 So. 47, 1937 Miss. LEXIS 112 (Miss. 1937).

In homicide prosecution, exclusion of expert testimony of insane hospital physicians as to nature and character of mental disease with which deceased was afflicted held error, where knowledge of matters testified to was acquired by perusal of hospital records and not by a personal examination or by communications from deceased. Motley v. State, 174 Miss. 568, 165 So. 296, 1936 Miss. LEXIS 197 (Miss. 1936).

In homicide prosecution exclusion as privileged, of testimony of insane hospital physicians as to knowledge of deceased's insanity acquired from perusal of hospital records, held error, where statute required that records of examinations of patients be kept. Motley v. State, 174 Miss. 568, 165 So. 296, 1936 Miss. LEXIS 197 (Miss. 1936).

Testimony of physician treating insured, together with hospital records, held properly excluded in beneficiary's action on policy after insured's death. Metropolitan Life Ins. Co. v. McSwain, 149 Miss. 455, 115 So. 555, 1928 Miss. LEXIS 41 (Miss. 1928).

11. Waiver.

For purposes of determining scope of a waiver of medical privilege, relevancy of particular medical information to condition which plaintiff has placed in issue by filing medical malpractice or other type of action is to be determined at judicial relevancy hearing if that determination cannot be worked out on amicable terms between opposing counsel. Scott by & Through Scott v. Flynt, 704 So. 2d 998, 1996 Miss. LEXIS 147 (Miss. 1996).

In a personal injury action arising from a motor vehicle accident, the plaintiff, by filing suit and submitting evidence on his injuries, waived the physician-patient privilege only to the extent of those injuries and expenses for treatment. Thus, information given to the plaintiff's treating physician concerning the cause of the accident was privileged. Additionally, the plaintiff did not waive the privilege by answering questions on cross-examination and denying that he had made certain statements regarding the cause of the accident to the treating physician. The testimony of a plaintiff on cross-examination as to communications made to his or her physician is not voluntary so as to constitute a waiver of the physician-patient privilege. Sessums ex rel. Sessums v.

McFall, 551 So. 2d 178, 1989 Miss. LEXIS 367 (Miss. 1989).

Where a patient has been treated or examined by different physicians at different times for the same ailment, and the patient permits one of his physicians to testify about his physical condition, he does not waive the right to assert his statutory privilege of confidential communication as to the other attending physicians. Hill v. Stewart, 209 So. 2d 809, 1968 Miss. LEXIS 1470 (Miss. 1968), overruled in part, Hall v. Hilbun, 466 So. 2d 856, 1985 Miss. LEXIS 1935 (Miss. 1985).

Although the testimony of one of the physicians who had treated the decedent during his terminal illness was introduced in evidence in a malpractice action, the depositions of other physicians who examined and diagnosed decedent's illness and treated him according to their learning cannot be taken or introduced into evidence without the intentional or express waiver by the heirs of the deceased. Hill v. Stewart, 209 So. 2d 809, 1968 Miss. LEXIS 1470 (Miss. 1968), overruled in part, Hall v. Hilbun, 466 So. 2d 856, 1985 Miss. LEXIS 1935 (Miss. 1985).

The waiver of the physician-patient privilege as to one of a party's physicians does not operate as a waiver of the privilege as to any other physicians. Hardy v. Riser, 309 F. Supp. 1234, 1970 U.S. Dist. LEXIS 12906 (N.D. Miss. 1970).

When a party to a law suit takes the stand and voluntarily testifies as to his injuries, their treatment by a physician, and what he and his physician said about them, he waives his privilege. Hardy v. Riser, 309 F. Supp. 1234, 1970 U.S. Dist. LEXIS 12906 (N.D. Miss. 1970).

Where a patient voluntarily goes into detail regarding the nature of her injuries and either testifies as to what a particular physician did or said while in attendance, or relates what she communicated to the physician, the privilege is waived and the adverse party may examine the physician. Dennis v. Prisock, 254 Miss. 574, 181 So. 2d 125, 1965 Miss. LEXIS 967 (Miss. 1965).

Plaintiff patient waives his rights to claim privileged communications under the provisions of this section [Code 1942, § 1697] when plaintiff makes effort to induce defendant to produce his doctor or to have defendant's doctor testify concerning injuries received by plaintiff in defendant's employ, but defendant is not required to accept or act upon such waiver. Johns-Mansville Products Corp. v. Cather, 208 Miss. 268, 44 So. 2d 405, 1950 Miss. LEXIS 246 (Miss. 1950).

To effectively constitute a waiver of a physician's testimony, the consent must make reasonably and readily available both the physician's testimony and physical presence; this is not done by consent at trial time when the physician is known to be out of town. Gatlin v. Allen, 203 Miss. 135, 33 So. 2d 304, 1948 Miss. LEXIS 240 (Miss. 1948).

Where plaintiff's expressed willingness, on examination in action for personal injury, for any of the doctors who examined her to testify, constituted a waiver of her privilege under this section [Code 1942, § 1697], and such offer was made before the taking of testimony in the case had reached the halfway mark, and there was no showing that a specific physician, who had treated her, was not reasonably available and that his attendance could not have been procured without unreasonable delay or discomfiture to the court, an instruction that if said doctor was available as a witness in her behalf and she failed to introduce him as such witness, the presumption would be that his testimony would have been adverse to the plaintiff, was erroneous. Clary v. Breyer, 194 Miss. 612, 13 So. 2d 633, 1943 Miss. LEXIS 106 (Miss. 1943).

This section [Code 1942, § 1697] has no application to a situation where one claiming disability benefits under a life insurance policy voluntarily presented himself to a physician employed by the insurance company solely for the purpose of an examination, and not for professional advice or treatment, so as to enable such physician to report the facts he might find to the insurance company; and under such circumstances, the privilege not only did not arise but was also waived. Metropolitan Life Ins. Co. v. Evans, 183 Miss. 859, 183 Miss. 860, 184 So. 426, 1938 Miss. LEXIS 300 (Miss. 1938).

Privileged communication statute held not to prevent physical and X-ray examination of parts of plaintiff's body which were alleged to have been injured and which were voluntarily exhibited to jury for inspection and examination. Dixie Greyhound Lines, Inc. v. Matthews, 177 Miss. 103, 170 So. 686, 1936 Miss. LEXIS 254 (Miss. 1936).

Plaintiff's testifying on cross-examination that he was willing for physician to testify did not constitute waiver of right to claim privilege. Coca Cola Bottling Works v. Simpson, 158 Miss. 390, 130 So. 479, 1930 Miss. LEXIS 55 (Miss. 1930).

Testimony of plaintiff on cross-examination regarding communications made to physician is not "voluntary" in sense constituting waiver of privilege. Coca Cola Bottling Works v. Simpson, 158 Miss. 390, 130 So. 479, 1930 Miss. LEXIS 55 (Miss. 1930).

Testimony of physician attending patient not admissible unless consented to by patient; privilege not waived by placing other physicians on the witness stand. Davis v. Elzey, 126 Miss. 789, 88 So. 630, 1921 Miss. LEXIS 28 (Miss. 1921).

Privilege respecting testimony of physician not waived by calling other physicians; testimony should not be received in absence of jury. United States Fidelity & Guaranty Co. v. Hood, 124 Miss. 548, 87 So. 115, 1920 Miss. LEXIS 546 (Miss. 1920).

Error in permitting privileged testimony by physician in behalf of defendant not cured by plaintiff introducing another physician to rebut such testimony. Hamel v. Southern R. Co., 113 Miss. 344, 74 So. 276, 1917 Miss. LEXIS 108 (Miss. 1917).

12. —Waiver by contract.

Blood alcohol test administered as part of medical treatment is admissible in civil action where driver from whom blood is taken has made contractual waiver of physician-patient privilege. Edwards v. Ellis, 478 So. 2d 282, 1985 Miss. LEXIS 2262 (Miss. 1985).

Under Mississippi law, the physician-patient privilege can be waived by a contractual provision contained in an application for life insurance. Leach v. Millers Life Ins. Co., 400 F.2d 179, 1968 U.S. App. LEXIS 5523 (5th Cir. Miss. 1968).

The benefits of the privileged communication statute may be waived by contract before trial. Fornea v. Goodyear Yellow Pine Co., 181 Miss. 50, 178 So. 914, 1938 Miss. LEXIS 51 (Miss. 1938).

Testimony of physician who treated employee immediately after accident held admissible, over employee's objection, where employee had executed contract waiving benefits of privileged communications statute. Fornea v. Goodyear Yellow Pine Co., 181 Miss. 50, 178 So. 914, 1938 Miss. LEXIS 51 (Miss. 1938).

In action on life policy, testimony of physicians who had treated insured held admissible to prove that insured's physical condition was impaired at time he secured reinstatement of policy in view of clause in policy waiving any provisions of law making such testimony inadmissible. New York Life Ins. Co. v. Burris, 174 Miss. 658, 165 So. 116, 1936 Miss. LEXIS 191 (Miss. 1936).

Patient may waive privilege; provision in insurance policy waiving privilege renders physician's testimony competent as to health. Sovereign Camp, Woodmen of World v. Farmer, 116 Miss. 626, 77 So. 655, 1917 Miss. LEXIS 352 (Miss. 1917).

13. —Persons who may waive.

Nephew carried out his duty as personal representative by probating the decedent's 2005 will and thus held the general medical privilege as the decedent's personal representative under the rule; the statute also authorized the nephew to waive the entire medical privilege as a personal representative and contestant of the 2012 will, and thus the ex parte rule did not operate to bar his attorney from speaking alone with the physician witness. Estate of Lyons v. Lyons, 227 So. 3d 910, 2017 Miss. LEXIS 131 (Miss. 2017).

The doctor-patient privilege applies in criminal proceedings, but the privilege may be waived. Accordingly, in a prosecution for manslaughter by culpable negligence, defendant waived the privilege when he called his physician to the stand as his own witness and the result of a blood alcohol test administered by the physician was elicited from the doctor on cross-examination without objection from defendant. Ashley v. State, 423 So. 2d 1311, 1982 Miss. LEXIS 2266 (Miss. 1982).

Where the order appointing a temporary administratrix left part of the assets in the hands of an executor, either the temporary administratrix or the executor could waive the statutory privilege, thereby permitting the physician of the testatrix to give his opinion as to her competency on the date on which a purported will was executed. In re Will of McGough, 222 So. 2d 673, 1969 Miss. LEXIS 1542 (Miss. 1969).

Physician's privilege against testifying as to facts learned in employment may be waived in criminal case; consent of grandmother in loco parentis held waiver under statute so as to make admissible physician's testimony as to condition of 12-year-old rape victim. Jenkins v. State, 146 Miss. 339, 111 So. 433, 1927 Miss. LEXIS 183 (Miss. 1927).

Statutory prohibition against disclosure by physician of communications of patient survives patient's death and cannot be waived by his heirs, executor, or administrator. McCaw v. Turner, 126 Miss. 260, 88 So. 705, 1921 Miss. LEXIS 34 (Miss. 1921).

14. Failure to call physician as subject of inference.

In an action for injuries to plaintiff when automobile in which she was riding was struck from rear, where plaintiff pleaded privilege, the refusal to permit counsel for defendant to examine doctor who treated plaintiff, for the purpose of showing that a doctor was available as a witness, was not an error in view of the instructions that defendant could not compel a doctor to testify, and jury was warranted in inferring that the testimony of the doctor would be unfavorable to the plaintiff if he had been permitted to testify. Gulf Refining Co. v. Myrick, 220 Miss. 429, 71 So. 2d 217, 1954 Miss. LEXIS 458 (Miss. 1954).

An instruction would not be proper which stated that failure of the plaintiff to call his physician raised a presumption that the doctor's testimony would be harmful to the plaintiff's case. Gatlin v. Allen, 203 Miss. 135, 33 So. 2d 304, 1948 Miss. LEXIS 240 (Miss. 1948).

Where plaintiff's expressed willingness, on examination in action for personal injury, for any of the doctors who examined her to testify, constituted a waiver of her privilege under this section [Code 1942, § 1697], and such offer was made before the taking of testimony in the case had reached the halfway mark, and there was no showing that a specific physician, who had treated her, was not reasonably available and that his attendance could not have been procured without unreasonable delay or discomfiture to the court, an instruction that if said doctor was available as a witness in her behalf and she failed to introduce him as such witness, the presumption would be that his testimony would have been adverse to the plaintiff, was erroneous. Clary v. Breyer, 194 Miss. 612, 13 So. 2d 633, 1943 Miss. LEXIS 106 (Miss. 1943).

An instruction that the plaintiff's failure to produce as a witness one of three physicians who had attended him would justify the jury in inferring that the testimony of such physicians would have been unfavorable to the plaintiff, was proper. Killings v. Metropolitan Life Ins. Co., 187 Miss. 265, 192 So. 577, 1940 Miss. LEXIS 205 (Miss. 1940).

Instruction that plaintiff's failure to use physician, who attended him after injuries sued for, as witness may create presumption that such physician's testimony would be unfavorable to plaintiff, held not erroneous as abolishing protection of privilege communications statute. Robinson v. Haydel, 177 Miss. 233, 171 So. 7, 1936 Miss. LEXIS 266 (Miss. 1936).

Instruction that jury should not draw unfavorable inferences against defendant because he did not introduce plaintiff's physician as witness held reversible error as authorizing jury to draw unfavorable inference to plaintiff. Hobson v. McLeod, 165 Miss. 853, 147 So. 778, 1933 Miss. LEXIS 308 (Miss. 1933).

Jury had no right to draw any inference against plaintiff because he failed to offer his physician as witness. Hobson v. McLeod, 165 Miss. 853, 147 So. 778, 1933 Miss. LEXIS 308 (Miss. 1933).

OPINIONS OF THE ATTORNEY GENERAL

Medical information contained in "run reports" from City EMS units which contain name of person treated, address of response, physical data, summary of any medical treatment or other action taken in response to run and other pertinent information, is confidential; other information in reports is public. Lawrence Oct. 6, 1993, A.G. Op. #93-0592.

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. McGee, Dec. 2, 2002, A.G. Op. #02-0543.

Whether county emergency medical service records, including health conditions of persons injured in an accident, constituted exempt "hospital records" under Section 41-9-68 or were otherwise privileged under Section 13-1-21 is a factual question. Lamar, Dec. 16, 2005, A.G. Op. 05-0595.

RESEARCH REFERENCES

ALR.

Right of one against whom testimony is offered to invoke privilege of communication between others. 2 A.L.R.2d 645.

Inferences arising from refusal of witness other than accused to answer question on the ground that answer would tend to incriminate him. 24 A.L.R.2d 895.

Construction and effect of statute removing or modifying, in personal injury actions, patient's privilege against disclosure by physician. 25 A.L.R.2d 1429.

Privileged nature of hospital record relating to intoxication or sobriety of patient. 38 A.L.R.2d 778.

Privilege of communication by or to nurse or attendant. 47 A.L.R.2d 742.

Party's waiver of privilege as to communications with counsel by taking stand and testifying. 51 A.L.R.2d 521.

Pleading or raising defense of privilege in defamation action. 51 A.L.R.2d 552.

Right of physician, notwithstanding physician-patient privilege, to give expert testimony based on hypothetical question. 64 A.L.R.2d 1056.

Who may waive privilege of confidential communication to physician by person since deceased. 97 A.L.R.2d 393.

Testimony as to communications or observations as to mental condition of patient treated for other condition. 100 A.L.R.2d 648.

Waiver of privilege as regards one physician as a waiver as to other physicians. 5 A.L.R.3d 1244.

Applicability in criminal proceedings of privilege as to communications between physician and patient. 7 A.L.R.3d 1458.

Physician's tort liability, apart from defamation, for unauthorized disclosure of confidential information about patient. 20 A.L.R.3d 1109.

Admissibility of physician's testimony as to patient's statements or declarations, other than res gestae, during medical examination. 37 A.L.R.3d 778.

Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist or psychologist and patient. 44 A.L.R.3d 24.

Discovery, in medical malpractice action, of names of other patients to whom defendant has given treatment similar to that allegedly injuring plaintiff. 74 A.L.R.3d 1055.

Physician-patient privilege as applied to physician's testimony concerning wound required to be reported to public authority. 85 A.L.R.3d 1196.

Physician-patient privilege as extending to patient's medical or hospital records. 10 A.L.R.4th 552.

What constitutes physician-patient relationship for malpractice purposes. 17 A.L.R.4th 132.

Constitutionality, with respect to accused's rights to information or confrontation, of statute according confidentiality to sex crime victim's communications to sexual counselor. 43 A.L.R.4th 395.

Validity, construction, and application of statute limiting physician-patient privilege in judicial proceedings relating to child abuse or neglect. 44 A.L.R.4th 649.

Physician's tort liability for unauthorized disclosure of confidential information about patient. 48 A.L.R.4th 668.

Insured-insurer communications as privileged. 55 A.L.R.4th 336.

Waiver of evidentiary privilege by inadvertent disclosure – state law. 51 A.L.R.5th 603.

Construction and Application of Fiduciary Duty Exception to Attorney-Client Privilege. 47 A.L.R.6th 255.

Situations in which federal courts are governed by state law of privilege under Rule 501 of the Federal Rules of Evidence. 48 A.L.R. Fed. 259.

Am. Jur.

81 Am. Jur. 2d, Witnesses §§ 397 et seq, 463.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons and Other Healers, Form 353 (complaint, petition, or declaration, plaintiff improperly diagnosed as suffering from dangerous communicable disease, plaintiff quarantined in hospital until condition correctly diagnosed).

17 Am. Jur. Proof of Facts, Privileged Communications between Physician and Patient, § 17 (proof that physician-patient relation existed between accused and examining physician).

17 Am. Jur. Proof of Facts, Privileged Communications between Physician and Patient, § 18 (proof that no physician-patient relation existed between accused and examining physician).

17 Am. Jur. Proof of Facts, Privileged Communications between Physician and Patient, § 19 (use of nonprivileged information to establish physical condition of patient in civil action).

45 Am. Jur. Proof of Facts 2d 595, Protected Communication Between Physician And Patient.

46 Am. Jur. Proof of Facts 2d 373, Existence of Physician and Patient Relationship.

2 Am. Jur. Trials, Selecting and Preparing Expert Witnesses, § 57.

32 Am. Jur. Trials 105, Unauthorized Disclosure of Confidential Patient Information.

CJS.

98 C.J.S., Witnesses §§ 411 et seq., 468, 469, 472, 477, 485 et seq.

Law Reviews.

1982 Mississippi Supreme Court Review: Torts. 53 Miss. L. J. 167, March 1983.

Whitfield, Mississippi medical privilege: blessing or curse? 12 Miss. C. L. Rev. 461, Spring, 1992.

McCormick, The Repealer: Conflicts in Evidence Created by Misapplication of Mississippi Rule of Evidence 1103. 67 Miss. L. J. 547, Winter, 1997.

§ 13-1-21.1. Medical privilege considered waived by and between defendants in medical malpractice suits involving multiple defendants.

In any medical malpractice action with multiple defendants, the medical privilege shall be considered waived by and between all defendants.

HISTORY: Laws, 2004, 1st Ex Sess, ch. 1, § 17, eff from and after Jan. 1, 2007.

Editor's Notes — Laws of 2004, 1st Extraordinary Session, ch. 1, § 20 provides: "SECTION 20. Sections 8 through 15 of this act shall take effect and be in force from and after January 1, 2007; the remainder of this act shall take effect and be in force from and after September 1, 2004, and Sections 1 through 7 of this act shall apply to all causes of action filed on or after September 1, 2004."

§ 13-1-22. Confidentiality of priest-penitent communications.

(1) As used in this section:

(a) A "clergyman" is a minister, priest, rabbi, or other similar functionary of a church, religious organization, or religious denomination.

(b) A communication is "confidential" if made privately and not intended for further disclosure except in furtherance of the purpose of the communication.

(2) A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(3) The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The clergyman shall claim the privilege on behalf of the person unless the privilege is waived.

(4) A clergyman's secretary, stenographer or clerk shall not be examined without the consent of the clergyman concerning any fact, the knowledge of which was acquired in such capacity.

HISTORY: Laws, 1976, ch. 453, eff from and after July 1, 1976.

Editor's Notes — The preamble to Chapter 453 of the Laws of 1976 provides as follows:

"Whereas, the emotional, mental and spiritual health of many of our citizens depends upon the free and confidential access to their clergymen or spiritual advisers; Now, therefore,

"Be it enacted by the Legislature of the State of Mississippi:"

Cross References — Additional provisions relative to priest-penitent privilege, see Miss. R. Evid. 505.

RESEARCH REFERENCES

ALR.

Right of one against whom testimony is offered to invoke privilege of communications between others. 2 A.L.R.2d 645.

Matters to which the privilege covering communications to clergyman or spiritual adviser extends. 22 A.L.R.2d 1152.

Who is "clergyman" or the like entitled to assert privilege attaching to communications to clergymen or spiritual advisers. 49 A.L.R.3d 1205.

Matters to which the privilege covering communications to clergyman or spiritual adviser extends. 71 A.L.R.3d 794.

Insured-insurer communications as privileged. 55 A.L.R.4th 336.

Waiver of evidentiary privilege by inadvertent disclosure – state law. 51 A.L.R.5th 603.

Situations in which federal courts are governed by state law of privilege under Rule 501 of the Federal Rules of Evidence. 48 A.L.R. Fed. 259.

Communications to clergyman as privileged in federal proceedings. 118 A.L.R. Fed. 449.

Am. Jur.

81 Am. Jur. 2d, Witnesses §§ 474, 481, 482, 488.

CJS.

98 C.J.S., Witnesses § 501–503.

Law Reviews.

McCormick, The Repealer: Conflicts in Evidence Created by Misapplication of Mississippi Rule of Evidence 1103. 67 Miss. L. J. 547, Winter, 1997.

§ 13-1-22.1. Certain communications made to certified peer support member by emergency responder to be privileged; definitions; exception to privilege; penalties.

(1) As used in this section, unless the context clearly indicates otherwise:

(a) "Certified peer support member" means a law enforcement officer, fireman or emergency medical technician of an emergency service agency or entity who has received training in critical incident stress management and who is certified as a peer support member by the State Board of Health or the Department of Public Safety to provide emotional and moral support to an emergency responder who needs those services as a result of job-related stress or an incident in which the emergency responder was involved while acting in his official capacity.

(b) "Peer support event" means any debriefing, defusing or counseling session conducted by a certified peer support member that involves the emotional or moral support of an emergency responder who needs those services as a result of job-related stress or an incident in which the emergency responder was involved while acting in his official capacity.

(2) A certified peer support member shall not be compelled, without the consent of the emergency responder making the communication, to testify or in any way disclose the contents of any communication made to the certified peer support member by the emergency responder while engaged in a peer support event. This privilege only applies when the communication was made to the certified peer support member during the course of an actual peer support event.

(3) The privilege shall not apply if:

(a) The certified peer support member was an initial emergency service responder, a witness or a party to the incident that prompted the providing of the peer support event to the emergency responder;

(b) A communication reveals the intended commission of a crime or harmful act and such disclosure is determined to be necessary by the certified peer support member to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety; or

(c) A crime has been committed and divulged.

(4) Any certified peer support member who reveals the contents of a privileged communication, or any person who threatens, intimidates, or in any way attempts to compel a certified peer support member to disclose the contents of a privileged communication, shall be guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

HISTORY: Laws, 2006, ch. 440, § 2, eff from and after July 1, 2006.

§ 13-1-23. Presumption of death.

Any person who shall remain beyond the sea, or absent himself from this state, or conceal himself in this state, for seven years successively without being heard of, shall be presumed to be dead in any case where his death shall come in question, unless proof be made that he was alive within that time. Any property or estate recovered in any such case shall be restored to the person evicted or deprived thereof, if, in a subsequent action, it shall be proved that the person so presumed to be dead is living.

HISTORY: Codes, 1857, ch. 61, art. 252; 1871, § 882; 1880, § 1648; 1892, § 1737; 1906, § 1914; Hemingway's 1917, § 1574; 1930, § 1537; 1942, § 1698.

Cross References — Provisions of Uniform Simultaneous Death Law, see §§ 91-3-1 through 91-3-15.

Crime of bigamy not extending to person whose spouse has been absent for seven years, see § 97-29-15.

Presumptions in civil actions and proceedings generally, see Miss. R. Evid. 301.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence giving rise to presumption.
3. Application of presumption in marital situations.
4. Rebuttal of presumption.

1. In general.

If detrimental reliance upon decree pursuant to § 13-1-23 can be shown, party presumed to be dead will not be allowed at some later date to be restored to property which was conveyed in reliance upon statute. Martin v. Phillips, 514 So. 2d 338, 1987 Miss. LEXIS 2820 (Miss. 1987).

Burden of proof is upon party attempting to prove death at any particular time within 7 years; no presumption as to time of death. New York Life Ins. Co. v. Brame, 112 Miss. 828, 73 So. 806, 1916 Miss. LEXIS 188 (Miss. 1916); Clement v. Knights of Maccabees of World, 113 Miss. 392, 74 So. 287, 1917 Miss. LEXIS 114 (Miss. 1917).

2. Evidence giving rise to presumption.

Clement v. Knights of Maccabees of World, 113 Miss. 392, 74 So. 287, 1917 Miss. LEXIS 114 (Miss. 1917).

A grant of letters of administration on an estate is prima facie evidence of the death of a person upon whose estate the administration is granted. Cock v. Abernathy, 77 Miss. 872, 28 So. 18, 1900 Miss. LEXIS 47 (Miss. 1900).

This section [Code 1942, § 1698] does not justify the presumption of the death of three infant devisees, who at the time of their departure from their last-known residence in this state, about eleven years before the trial, were of very tender years, the eldest being only seven years old, and who disappeared along with their mother and stepfather, the last named being at the time under apprehension of a criminal prosecution. The presumption of death not arising in such case because of the number and youth of such devisees, their subjection to the will of others and their incapacity to absent themselves from and conceal themselves within the state, the burden of proving their death is on him who asserts it, and is not met by the testimony of one or two witnesses who casually learned that such devisees once lived in a certain town in the state, such witnesses having only slight opportunity of knowing the facts. Manley v. Patterson, 73 Miss. 417, 19 So. 236 (Miss. 1895).

The uncontradicted testimony of the mother that the last she ever heard of her son was that ten years before he sailed on board a vessel for a foreign port, and that about five days afterwards there was a storm at sea, and that neither the ship nor anyone on board has ever been heard of since, and that she is satisfied her son is dead, fully establishes the presumption of death authorized by the statute. Learned v. Corley, 43 Miss. 687, 1870 Miss. LEXIS 76 (Miss. 1870), overruled, Cole v. Johnson, 53 Miss. 94, 1876 Miss. LEXIS 41 (Miss. 1876).

3. Application of presumption in marital situations.

Where a woman, more than twenty years after her husband had left her and gone to Arkansas, and, after having been informed by his sister that a letter from a postmaster in Arkansas stated that her husband had been drowned, remarried, without any divorce having been granted, and it was thereafter discovered that her first husband was still living and had also remarried, the woman's second marriage was invalid, and the heirs of her second husband were entitled, as against her, to the proceeds of an insurance association policy, a bylaw of which association provided that beneficiaries must be related by blood or by marriage, or must be persons upon whom the insured was wholly dependent for a living, notwithstanding she was designated in such policy as beneficiary. Frank v. Frank, 193 Miss. 605, 10 So. 2d 839, 1942 Miss. LEXIS 159 (Miss. 1942).

Where woman's undivorced husband lived openly within state after his release from penitentiary and kept in touch with near relatives living in county in which he had formerly resided, such woman's subsequent marriage while husband lived held invalid, since inquiry would have disclosed that he was then alive, notwithstanding rumors that he was dead. Watson v. Watson, 177 Miss. 767, 171 So. 701, 1937 Miss. LEXIS 149 (Miss. 1937).

The presumption of the death of a husband or wife authorized by the statute will be applied in favor of the validity of a marriage contracted by the abandoned party after the expiration of the seven years. Spears v. Burton, 31 Miss. 547, 1856 Miss. LEXIS 115 (Miss. 1856); Gibson v. State, 38 Miss. 313, 1860 Miss. LEXIS 2 (Miss. 1860).

4. Rebuttal of presumption.

The presumption of one's death arising from seven years' absence without being heard from disappears when proof is made that he was alive within that time. Hill v. United Timber & Lumber Co., 68 So. 2d 420 (Miss. 1953).

This section [Code 1942, § 1698] embodies a rule at common law, and under it the presumption of death of a husband arising from seven years of absence without being heard from disappears when proof was made that he was alive within that time. Frank v. Frank, 193 Miss. 605, 10 So. 2d 839, 1942 Miss. LEXIS 159 (Miss. 1942).

Statutory presumption of death ends when it is shown that person whose death is in question is, in fact, alive. Watson v. Watson, 177 Miss. 767, 171 So. 701, 1937 Miss. LEXIS 149 (Miss. 1937); Johnson v. Lee, 212 Miss. 603, 55 So. 2d 140, 1951 Miss. LEXIS 489 (Miss. 1951).

That person was fugitive from justice held insufficient to rebut statutory presumption of death from absence for 7 years. Parker v. New York Life Ins. Co., 142 Miss. 517, 107 So. 198, 1926 Miss. LEXIS 60 (Miss. 1926).

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d (Rev), Absentees §§ 1 et seq.

22A Am. Jur. 2d, Death §§ 390- 392 et seq.

Affidavit of absence, 1 Am. Jur. Legal Forms 2d, Absentees § 2:11.

1 Am. Jur. Proof of Facts, Absence, Proof No. 1.

CJS.

25A C.J.S., Death §§ 8-15.

§ 13-1-25. Presumptions as to status of military and naval personnel or federal civilian employees.

(1) A written finding of presumed death, made by any officer or employee of the United States authorized to make such finding, pursuant to federal law

(5 USC §§ 5561-5568; 37 USC §§ 551-558), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this state as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance.

(2) An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the laws referred to in subsection (1) of this section or by any other law of the United States to make same, shall be received in any court, office or other place in this state as prima facie evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be.

(3) For the purposes of subsections (1) and (2) of this section any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said subsections shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify.

HISTORY: Codes, 1942, § 1698-01; Laws, 1946, ch. 353 §§ 1-3.

Cross References — Presumptions in civil actions and proceedings generally, see Miss. R. Evid 301.

RESEARCH REFERENCES

Am. Jur.
22A Am. Jur. 2d, Death §§ 399 et seq.

§§ 13-1-27 through 13-1-75. Repealed.

Repealed by Laws of 1975, ch. 501, § 22, eff from and after January 1, 1976.

§ 13-1-27. [Codes, Hutchinson's 1848, ch. 60, art. 1 (113, 114); 1857, ch. 61, art. 209, ch. 62, art. 88; 1871, §§ 788, 1079; 1880, §§ 1608, 1940; 1892, §§ 1747, 1759; 1906, §§ 1924, 1936; Hemingway's 1917, §§ 1584, 1596; 1930, § 1538; 1942, § 1699; Laws, 1948, ch. 231]

§ 13-1-29. [Codes, Hutchinson's 1848, ch. 50, art. 2 (13); 1857, ch. 58, art. 17; 1871, § 1314; 1880, § 2203; 1892, § 1748; 1906, § 1925; Hemingway's 1917, § 1585; 1930, § 1552; 1942, § 1713]

§ 13-1-31. [Codes, 1857, ch. 61, art. 210; 1871, § 790; 1880, § 1609; 1892, § 1749; 1906, § 1926; Hemingway's 1917, § 1586; 1930, § 1539; 1942, § 1700]

§ 13-1-33. [Codes, 1892, § 1750; 1906, § 1927; Hemingway's 1917, § 1587; 1930, § 1540; 1942, § 1701; Laws, 1958, ch. 255]

§ 13-1-35. [Codes, Hutchinson's 1848, ch. 60, art. 1 (116); 1857, ch. 61, art. 212; 1871, § 791; 1880, § 1611; 1892, § 1751; 1906, § 1928; Hemingway's 1917, § 1588; 1930, § 1542; 1942, § 1703]

§ 13-1-37. [Codes, 1857, ch. 61, art. 214; 1871, § 793; 1880, § 1613; 1892, § 1753; 1906, § 1930; Hemingway's 1917, § 1590; 1930, § 1543; 1942, § 1704]

§ 13-1-39. [Codes, Hutchinson's 1848, ch. 60, art. 14; 1857, ch. 61, art. 219; 1871, § 798; 1880, § 1618; 1892, § 1757; 1906, § 1934; Hemingway's 1917, § 1594; 1930, § 1541; 1942, § 1702]

§ 13-1-41. [Codes, Hutchinson's 1848, ch. 60, art 1 (120); 1857, ch. 61, art. 213; 1871, § 792; 1880, § 1612; 1892, § 1752; 1906, § 1929; Hemingway's 1917, § 1589; 1930, § 1544; 1942, § 1705]

§ 13-1-43. [Codes, 1857, ch. 61, art. 215; 1871, § 794; 1880, § 1614; 1892, § 1754; 1906, § 1931; Hemingway's 1917, § 1591; 1930, § 1545; 1942, § 1706]

§ 13-1-45. [Codes, 1857, ch. 61, art. 218; 1871, § 797; 1880, § 1617; 1892, § 1755; 1906, § 1932, Hemingway's 1917, § 1592; 1930, § 1546; 1942, § 1707]

§ 13-1-47. [Codes, Hutchinson's 1848, ch. 60, art. 1 (117); 1857, ch. 61, art. 216; 1871, § 795; 1880, §§ 1615, 1946; 1892, § 1756; 1906, § 1933; Hemingway's 1917, § 1593; 1930, § 1547; 1942, § 1708; Laws, 1956, ch. 236, eff. July 1, 1956]

§ 13-1-49. [Codes, 1857, ch. 61, art. 221, ch. 62, art. 93; 1871, § 1086; 1880, §§ 1620, 1948; 1892, § 1758; 1906, § 1935; Hemingway's 1917, § 1595; 1930, § 1548; 1942, § 1709]

§ 13-1-51. [Codes, 1857, ch. 62, art. 92; 1871, § 1085; 1880, § 1943; 1892, § 1761; 1906, § 1938; Hemingway's 1917, § 1598; 1930, § 1551; 1942, § 1712; Laws, 1956, ch. 237, eff. July 1, 1956]

§ 13-1-53. [Codes, 1880, § 1944; 1892, § 1762; 1906, § 1939; Hemingway's 1917, § 1599; 1930, § 1549; 1942, § 1710]

§ 13-1-55. [Codes, 1871, § 1076; 1880, § 1945; 1892, § 1763; 1906, § 1940; Hemingway's 1917, § 1600; 1930, § 1550; 1942, § 1711; Laws, 1882, p. 111]

§ 13-1-57. [Codes, 1880, § 1650; 1892, § 1766; 1907, § 1943; Hemingway's 1917, § 1603; 1930, § 1553; 1942, § 1714]

§ 13-1-59. [Codes, 1880, § 1651; 1892, § 1767; 1906, § 1944; Hemingway's 1917, § 1604; 1930, § 1554; 1942, § 1715]

§ 13-1-61. [Codes, 1880, § 1655; 1892, § 1768; 1906, § 1945; Hemingway's 1917, § 1605; 1930, § 1555; 1942, § 1716]

§ 13-1-63. [Codes, 1880, § 1652; 1892, § 1769; 1906, § 1946; Hemingway's 1917, § 1606; 1930, § 1556; 1942, § 1717]

§ 13-1-65. [Codes, 1880, § 1660; 1892, § 1770; 1906, § 1947; Hemingway's 1917, § 1607; 1930, § 1557; 1942, § 1718]

§ 13-1-67. [Codes, 1880, §§ 1653, 1654; 1892, §§ 1771, 1772; 1906, §§ 1948, 1949; Hemingway's 1917, §§ 1608, 1609; 1930, §§ 1558, 1559; 1942, §§ 1719, 1720]

§ 13-1-69. [Codes, 1880, § 1656; 1892, § 1773; 1906, § 1950; Hemingway's 1917, § 1610; 1930, § 1560; 1942, § 1721]

§ 13-1-71. [Codes, 1880, § 1657; 1892, § 1774; 1906, § 1951; Hemingway's 1917, § 1611; 1930, § 1561; 1942, § 1722]

§ 13-1-73. [Codes, 1880, § 1658; 1892, § 1775; 1906, § 1952; Hemingway's 1917, § 1612; 1930, § 1562; 1942, § 1723]

§ 13-1-75. [Codes, 1880, § 1659; 1892, § 1776; 1906, § 1953; Hemingway's 1917, § 1613; 1930, § 1563; 1942, § 1724]

Editor's Notes — Laws, 1975, ch. 501, § 22, additionally provides that "the provisions of said section shall continue to apply to all actions and proceedings pending in the Supreme, chancery, circuit and county courts of this state prior to the repeal of said sections." As to current statutory provisions for civil discovery, see §§ 13-1-201 et seq.

Former § 13-1-27 related to depositions.

Former § 13-1-29 related to deposition for use in a justice's court.

Former § 13-1-31 related to affidavit to be made by party desiring to take deposition.

Former § 13-1-33 related to depositions of witnesses in state; before whom taken; notice.

Former § 13-1-35 related to interrogatories to nonresident witness filed.

Former § 13-1-37 related to persons to whom commissions may be directed.

Former § 13-1-39 related to service of copies of interrogatories and notices.

Former § 13-1-41 related to notice to nonresident or absent party.

Former § 13-1-43 related to taking, returning, and opening depositions.

Former § 13-1-45 related to examination from day to day.

Former § 13-1-47 related to admissibility of depositions; attendance of witness may be procured.

Former § 13-1-49 related to exceptions to depositions.

Former § 13-1-51 related to obtaining pre-trial testimony of adversary.

Former § 13-1-53 related to party may examine adversary in open court.

Former § 13-1-55 related to interested witness may be examined in open court.

Former § 13-1-57 related to filing of written statement to institute proceeding perpetuating testimony.

Former § 13-1-59 related to notice in case of resident witness.

Former § 13-1-61 related to notice in case of nonresident witness.

Former § 13-1-63 related to service, return, and publication of notices.

Former § 13-1-65 related to service of notice upon minor.

Former § 13-1-67 related to perpetuation of testimony – taking of deposition of witness in state.

Former § 13-1-69 related to perpetuation of testimony – taking of deposition of nonresident.

Former § 13-1-71 related to depositions received and recorded.

Former § 13-1-73 related to admissibility of depositions.

Former § 13-1-75 related to costs paid by party procuring services.

§ 13-1-77. State custodian of books authorized to certify copies; admissibility of copies.

All public officers in this state having the charge or custody of any public books, records, papers, or writings, are authorized to certify copies of the same.

HISTORY: Codes, 1857, ch. 61, art. 235; 1871, § 814; 1880, § 1632; 1892, § 1791; 1906, § 1968; Hemingway's 1917, § 1628; 1930, § 1564; 1942, § 1725; Laws, 1991, ch. 573, § 88, eff from and after July 1, 1991.

Cross References — Furnishing by secretary of state of certificate of the official character of any state officer, see § 7-3-43.

Admissibility of bank's copy of customer's financial records, see § 13-1-245.

Furnishing copy of municipal ordinance in judicial proceeding, see § 21-13-17.

Prima facie evidentiary value of copies of records of state registrar of vital statistics, see § 41-57-9.

When book of record of conveyances shall not be removed from courthouse, see § 89-5-39.

Rule providing for the authentication of official documents, see Miss. R. Civ. P. 44.

Authentication and identification of evidence generally, see Miss. R. Civ. P. 901-903.

Evidence of contents of writings, recordings, and photographs generally, see Miss. R. Evid. 1001-1008.

JUDICIAL DECISIONS

1. In general.

Proof of prior convictions may be made by certified copies of judgments of convictions. Minnick v. State, 551 So. 2d 77, 1988 Miss. LEXIS 612 (Miss. 1988), rev'd, 498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489, 1990 U.S. LEXIS 6118 (U.S. 1990), overruled, Willie v. State, 585 So. 2d 660, 1991 Miss. LEXIS 454 (Miss. 1991).

Certified copies of sentencing orders were proper proof of prior convictions, sufficient under habitual offender statute, where certification at issue contained attestation that copy was true and correct, and attestation bore seal of court; lack of book and page number were not fatal. Monroe v. State, 515 So. 2d 860, 1987 Miss. LEXIS 2764 (Miss. 1987).

Introduction into evidence at capital murder trial of records of defendant's conviction in municipal court via the custodian of such records was not error. Stringer v. State, 500 So. 2d 928, 1986 Miss. LEXIS 2609 (Miss. 1986).

The certified abstract of a court record showing a defendant's prior conviction was competent evidence of such conviction and was not rendered incompetent by the fact that the abstract included the punishment inflicted for the prior offense. Lovelace v. State, 410 So. 2d 876, 1982 Miss. LEXIS 1875 (Miss. 1982).

In a prosecution for the unlawful possession of a slot machine found upon the accused's premises during a search by national guardsmen under authority of an executive order, and a search warrant issued by the county judge, it was not error to introduce in evidence a copy of the executive order, certified by the secretary of state, since whatever right, if any, accused had to subpoena witnesses and contradict the facts set forth in the original executive order applied as well to the copy as to the original. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

This section [Code 1942, § 1725] is applicable to the commissioner of public safety and therefore certified copy of orders suspending defendant's driving license was competent evidence in prosecution for driving a motor vehicle upon a public highway without a driving license. Middleton v. State, 214 Miss. 697, 59 So. 2d 320, 1952 Miss. LEXIS 508 (Miss. 1952).

A certified copy of the docket entries of a justice of peace showing charge of illegal possession of liquor, issuance of warrant, trial, plea of guilty, fine and payment of fine is admissible in prosecution for second offense to show prior conviction. Vincent v. State, 200 Miss. 423, 27 So. 2d 556, 1946 Miss. LEXIS 305 (Miss. 1946).

Statute [Code 1942, § 568], regulating manner of probating claims and providing for withdrawal of original note of deceased, when clerk has made and retained copy thereof, authorized withdrawal of original attached affidavit where clerk made and retained certified copy thereof. Deposit Guaranty Bank & Trust Co. v. Jordan's Estate, 171 Miss. 332, 157 So. 876, 1934 Miss. LEXIS 260 (Miss. 1934).

For copy or excerpt from journal of senate deposited with secretary of state to be admissible in evidence it must be certified to by him. Witherspoon v. State, 138 Miss. 310, 103 So. 134, 1925 Miss. LEXIS 55 (Miss. 1925).

A board of supervisors' books showing duplicate receipts given by a convict contractor to a sheriff for convicts is admissible in an action against the contractor's bondsmen. State use of Panola County v. Oliver, 78 Miss. 5, 27 So. 988, 1900 Miss. LEXIS 72 (Miss. 1900).

RESEARCH REFERENCES

ALR.

What constitutes books of original entry within rule as to admissibility of books of account. 17 A.L.R.2d 235.

Am. Jur.

29A Am. Jur. 2d (Rev), Evidence, §§ 1270 et seq.

23 Am. Jur. Proof of Facts 3d 621, Examination and Identification of Photocopies and Photocopiers.

CJS.

32 C.J.S., Evidence §§ 1133, 1144, 1145.

Law Reviews.

McCormick, The Repealer: Conflicts in Evidence Created by Misapplication of Mississippi Rule of Evidence 1103. 67 Miss L J 547, Winter, 1997.

§ 13-1-79. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991. [Codes, 1857, ch. 61, art. 230; 1871, § 809; 1880, § 1624; 1892, § 1783; 1906, § 1960; Hemingway's 1917, § 1620; 1930, § 1583; 1942, § 1745]

Editor's Notes — Former § 13-1-79 related to admissibility of certified copies of records of any united states office.

§ 13-1-81. Presumptions attending certificates, attestation, etc.

Any certificate, attestation, or authentication, purporting to have been made or given by any person as an officer of any state or of the United States, shall be prima facie evidence of the official character of such person.

HISTORY: Codes, 1880, § 1629; 1892, § 1796; 1906, § 1973; Hemingway's 1917, § 1633; 1930, § 1565; 1942, § 1726.

Cross References — Proof of documents generally, see Miss. R. Civ. P. 44.
Authentication and identification of evidence generally, see Miss. R. Civ. P. 901-903.

JUDICIAL DECISIONS

1. In general.

Judicial record of another state cannot be proved or admitted in courts of this state as evidence of a fact until there has been compliance with authentication act of Congress, 28 USC § 687. Wallace v. Herring, 207 Miss. 658, 43 So. 2d 100, 1949 Miss. LEXIS 377 (Miss. 1949).

Certificates of clerk of circuit court of Cook County and of clerk of superior court of Cook County which do not show that the signer of certificate is in fact clerk are not admissible in court of this state to prove that there was no divorce between resident of this state and resident of Cook County, Illinois as certificates were not authenticated in manner provided by 28 USC § 687. Wallace v. Herring, 207 Miss. 658, 43 So. 2d 100, 1949 Miss. LEXIS 377 (Miss. 1949).

Certificate of clerk of foreign court showing the amount paid under divorce decree directing payment in instalments of money for support of minor child is presumed to be correct and the clerk is presumed to have accounted for all payments received by him. Hatrak v. Hatrak, 206 Miss. 239, 39 So. 2d 779, 1949 Miss. LEXIS 258 (Miss. 1949).

§§ 13-1-83 through 13-1-117. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-1-83. [Codes, 1880, § 1628; 1892, § 1795; 1906, § 1972; Hemingway's 1917, § 1632; 1930, § 1566; 1942, § 1727]

§ 13-1-85. [Codes, 1942, § 4065.7-04; Laws, 1966, ch. 554, § 4]

§ 13-1-87. [Codes, 1857, ch. 61, art. 307; 1880, § 1787; 1892, § 1788; 1906, § 1965; Hemingway's 1917, § 1625; 1930, § 1567; 1942, § 1728]

§ 13-1-89. [Codes, 1880, § 1749; 1892, § 1792; 1906, § 1969; Hemingway's 1917, § 1629; 1930, § 1568; 1942, § 1729; Laws, 1896, ch. 101]

§ 13-1-91. [Codes, 1880, § 2211; 1892, § 1780; 1906, § 1957; Hemingway's 1917, § 1617; 1930, § 1569; 1942, § 1730]

§ 13-1-93. [Codes, 1857, ch. 8, art. 3; 1880, § 2388; 1892, § 1790; 1906, § 1967; Hemingway's 1917, § 1627; 1930, § 1570; 1942, § 1731]

§ 13-1-95. [Codes, 1892, § 1807; 1906, § 1984; Hemingway's 1917, § 1644; 1930, § 1571; 1942, § 1732]

§ 13-1-97. [Codes, Hutchinson's 1848, ch. 60, art. 11 (1); 1857, ch. 61, art. 228; 1871, § 807; 1880, § 1622; 1892, § 1779; 1906, § 1956; Hemingway's 1917, § 1616; 1930, § 1572; 1942, § 1733; Laws, 1896, chs. 101, 102]

§ 13-1-99. [Codes, 1857, ch. 61, art. 228; 1871, § 807; 1880, § 1622; 1892, § 1778; 1906, § 1955; Hemingway's 1917, § 1615; 1930, § 1584; 1942, § 1746]

§ 13-1-101. [Codes, Hutchinson's 1848, ch. 60, art. 2; 1857, ch. 61, art. 227; 1871, § 806; 1880, § 1621; 1892, § 1777; 1906, § 1954; Hemingway's 1917, § 1614; 1930, § 1585; 1942, § 1747]

§ 13-1-103. [Codes, Hutchinson's 1848, ch. 34, art. 1 (7); 1857, ch. 40, art 7; 1871, § 1761; 1880, § 1149; 1892, § 1789; 1906, § 1966; Hemingway's 1917, § 1626; 1930, § 1573; 1942, § 1734]

§ 13-1-105. [Codes, 1857, ch. 60, art. 48; 1871, § 1104; 1880, § 1975; 1892, § 1781; 1906, § 1958; Hemingway's 1917, § 1618; 1930, § 1574; 1942, § 1735]

§ 13-1-107. [Codes, 1857, ch. 61, art. 231; 1871, § 810; 1880, § 1625; 1892, § 1784; 1906, § 1961; Hemingway's 1917, § 1621; 1930, § 1575; 1942, § 1736]

§ 13-1-109. [Codes, Hutchinson's 1848, ch. 60, art. 4 (1); 1857, ch. 61, art. 232; 1871, § 811; 1880, § 1626; 1892, § 1785; 1906, § 1962; Hemingway's 1917, § 1622; 1930, § 1576; 1942, § 1737]

§ 13-1-111. [Codes, 1942, § 1749; Laws, 1936, ch. 253]

§ 13-1-113. [Codes, 1892, § 1786; 1906, § 1963; Hemingway's 1917, § 1623; 1930, § 1577; 1942, § 1738]

§ 13-1-114. [En Laws, 1979, ch. 389; Am 1986, ch. 359]

§ 13-1-115. [Codes, 1871, § 1700; 1880, § 526; 1892, § 1806; 1906, § 1983; Hemingway's 1917, § 1643; 1930, § 1578; 1942, §§ 1739, 1740]

§ 13-1-117. [Codes, 1857, ch. 60, art. 131; 1871, § 1189; 1880, § 2091; 1892, § 1787; 1906, § 1964; Hemingway's 1917, § 1624; 1930, § 1586; 1942, § 1748]

Editor's Notes — Former § 13-1-83 related to admissibility and effect of certificate of officer of search in office.

Former § 13-1-85 related to admissibility of state records preserved by department of archives and history.

Former § 13-1-87 related to certificate of clerk of board of supervisors as evidence of default.

Former § 13-1-89 related to evidence of enrollment of judgment.

Former § 13-1-91 related to copies of records relating to conveyance under judgments of justices of the peace.

Former § 13-1-93 related to copies of taxes bill of costs as evidence of amount due.

Former § 13-1-95 related to admissibility and effect of certain transcribed records.

Former § 13-1-97 related to admissibility of original writings and the like or records or copies thereof.

Former § 13-1-99 related to admissibility of copies of writings recorded in any other state.

Former § 13-1-101 related to admissibility of copies of foreign writings and the like.

Former § 13-1-103 related to admissibility of certificates of marriages and copies thereof.

Former § 13-1-105 related to admissibility of certified copies of wills and records thereof.

Former § 13-1-107 related to admissibility and effect of certified copies from books of entries of land.

Former § 13-1-109 related to admissibility of certified copies of field-notes and maps.

Former § 13-1-111 related to admissibility of transcribed testimony.

Former § 13-1-113 related to surveyor's certificate as prima facie evidence of certain facts.

Former § 13-1-114 permitted the certificate of a physician, chemist, or technician to be admitted as proof of the identity of a controlled substance if the analysis was performed in an approved laboratory and the certificate was properly attested to by the analyst.

Former § 13-1-115 related to tax collector's conveyance and list of lands sold as prima facie evidence.

Former § 13-1-117 related to certified copy of appointment of foreign executor, administrator or guardian.

§ 13-1-119. Repealed.

Repealed by Laws of 1989, ch. 465, § 1, eff from and after July 1, 1989.

[Codes, 1880, § 1059; 1892, § 1808; 1906, § 1985; Hemingway's 1917, § 1645; 1930, § 1580; 1942, § 1741; Laws 1912, ch. 215]

Editor's Notes — Former § 13-1-119 related to injuries to persons or property by railroads and certain others as prima facie evidence of want of skill.

§ 13-1-121. Injury to livestock in transit as prima facie evidence of carrier's want of skill.

In all actions against common carriers for injury or damage done to livestock while in transit, proof that the injury inflicted or damage done was inflicted or done to the livestock while in transit, shall be prima facie evidence of the want of reasonable skill and care on the part of the common carrier, their agents and employees in handling the shipment of livestock so injured or damaged.

HISTORY: Codes, Hemingway's 1921 Supp., § 1647a; 1930, § 1581; 1942, § 1743; Laws, 1920, ch. 241.

Cross References — Relevancy of evidence generally, see Rules 401-412, Mississippi Rules of Evidence.

RESEARCH REFERENCES

Am. Jur.
14 Am. Jur. 2d, Carriers §§ 587, 588
29 Am. Jur. 2d, Evidence §§ 143, 229, 232.
13 Am. Jur. 2d(Rev), Carriers §§ 375 et seq.
14 Am. Jur. 2d, Carriers §§ 587, 588; 29 Am. Jur. 2d, Evidence §§ 143, 229, 232.

CJS.
13 C.J.S., Carriers §§ 400 et seq.

§ 13-1-123. Injury to persons or property from operation of motor vehicle as making out prima facie case.

In any action brought to recover any damages, either to person or property, caused by running or operating a motor vehicle in violation of any of the provisions of Chapters 3 and 5 of Title 63 of the Mississippi Code of 1972, the plaintiff or plaintiffs shall be deemed to have made out a prima facie case by showing the fact of such injury, and that such person or persons operating, or causing to be run or operated, such motor vehicle, was at the time of the injury running or operating, or causing the said motor vehicle to be run or operated in a manner contrary to the provisions of Chapters 3 and 5 of Title 63 of the Mississippi Code of 1972.

HISTORY: Codes, Hemingway's 1917, § 5785; 1930, § 5588; 1942, § 1742; Laws, 1916, ch. 116.

Cross References — Other sections derived from same 1942 code section, see §§ 63-3-11, 63-7-81.
Relevancy of evidence generally, see Miss. R. Evid. 401-412.

JUDICIAL DECISIONS

1. In general.

In a personal injury action, a truck driver who struck a pedestrian was not negligent as a matter of law by virtue of the fact that he did not see the pedestrian in the highway in time to avoid striking him; the issue of the driver's negligence was for the jury to decide. Hood v. Oakley, 519 So. 2d 1236, 1988 Miss. LEXIS 158 (Miss. 1988).

In an action for damages resulting from an automobile accident, although negligence will not be presumed because the accident and the injury occurred, the accident is a proper circumstance or fact to be considered by the jury in deciding the issue of negligence. Bigelow v. Sports Cars, Ltd., 221 So. 2d 108, 1969 Miss. LEXIS 1492 (Miss. 1969).

In an action for damages resulting from an automobile accident, an instruction to the effect that if the rights of the plaintiff were doubtful in the minds of the jury, the jury should find for the defendant, because the burden is upon the plaintiff to prove his case by the greater weight of the believable evidence or the plaintiff has no right to recover, was improper, as leading to the conclusion that the jury was required to believe that the plaintiff must prove his case beyond a reasonable doubt, placing a greater burden of proof on the plaintiff than is required in a civil case. Bigelow v. Sports Cars, Ltd., 221 So. 2d 108, 1969 Miss. LEXIS 1492 (Miss. 1969).

While a patrolman or police officer, not an eyewitness to an accident, who investigates the accident shortly after it happens may properly testify as to the matters and things that he finds at the scene, he cannot be allowed to invade the province of the jury by giving his opinion as to how the accident happened. Lynch v. Suthoff, 220 So. 2d 593, 1969 Miss. LEXIS 1464 (Miss. 1969).

Automobile driver killing mule while driving at excessive speed was prima facie negligent. Lucedale Auto. Co. v. Daughdrill, 154 Miss. 707, 123 So. 871, 1929 Miss. LEXIS 186 (Miss. 1929).

Automobile held not dangerous instrumentality, rendering owner liable for driver's negligent use. Vicksburg Gas Co. v. Ferguson, 140 Miss. 543, 106 So. 258, 1925 Miss. LEXIS 289 (Miss. 1925).

Judgment for guest injured in automobile not reversed because of instructions whose error, if any, was harmless. Friis v. Gahan, 139 Miss. 375, 104 So. 170, 1925 Miss. LEXIS 158 (Miss. 1925).

Driver or owner of motor vehicle must show due care and observance of the statute. Flynt v. Fondren, 122 Miss. 248, 84 So. 188, 1920 Miss. LEXIS 433 (Miss. 1920).

RESEARCH REFERENCES

ALR.

What constitutes "operation" or "negligence in operation" within statute making owner of motor vehicle liable for negligence in its operation. 13 A.L.R.2d 378.

Admissibility, in civil motor vehicle accident case, of evidence that driver was or was not involved in previous accidents. 20 A.L.R.2d 1210.

Lack of proper automobile registration or operator's license as evidence of operator's negligence. 29 A.L.R.2d 963.

Admissibility of opinion evidence as to whether vehicle involved in collision was standing still or moving. 33 A.L.R.2d 866.

Admissibility in action involving motor vehicle accident of evidence as to manner in which participant was driving before reaching scene of accident. 46 A.L.R.2d 9.

Custom or practice of drivers of motor vehicles as affecting liability based on violation of law. 77 A.L.R.2d 1331.

Am. Jur.

7A Automobiles and Highway Traffic §§ 30, 31.

8 Am. Jur. 2d, Automobiles and Highway Traffic §§ 360 et seq.

CJS.

60 C.J.S., Motor Vehicles §§ 582, 587 et seq.

§§ 13-1-124 through 13-1-129. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-1-124. [En Laws, 1981, ch. 361, § 1]

§ 13-1-125. [Codes, 1857, ch. 61, art. 233; 1871, § 812; 1880, § 1630; 1892, § 1793; 1906, § 1970; Hemingway's 1917, § 1630; 1930, § 1593; 1942, § 1756]

§ 13-1-127. [Codes, 1857, ch. 61, art. 234; 1871, § 813; 1880, § 1631; 1892, § 1794; 1906, § 1971; Hemingway's 1917, § 1631; 1930, § 1594; 1942, § 1757]

§ 13-1-129. [Codes, Hutchinson's 1848, ch. 60, art. 9; 1857, ch. 61, art. 240; 1871, § 816; 1880, § 1636; 1892, § 1802; 1906, § 1979; Hemingway's 1917, § 1639; 1930, § 1592; 1942, § 1755]

Editor's Notes — Former § 13-1-124 provided that three forms of evidence, affidavits of the automobile owner and operator, an affidavit of the commissioner of public safety, or an affidavit of the claimant, would constitute prima facie evidence of an automobile owner and operator's uninsured status.

Former § 13-1-125 related to certified copies of bonds of officers and others as evidence.

Former § 13-1-127 related to copies of writings filed in other courts as evidence.

Former § 13-1-129 related to record of dishonor of bills and notes as evidence.

§ 13-1-131. Land-office certificates.

All certificates issued in pursuance of any act of Congress by any board of commissioners, register of any land office, or any other person authorized to issue such certificate, founded on any warrant, order of survey, entry, grant, confirmation, donation, preemption, or purchase from the United States of any land in this state, shall vest the full legal title to such land in the person to whom such certificate is granted, his heirs or assigns, so far as to enable the holder thereof to maintain an action thereon.

HISTORY: Codes, Hutchinson's 1848, ch. 60, art. 11 (2); 1857, ch. 61, art. 229; 1871, § 808; 1880, § 1623; 1892, § 1782; 1906, § 1959; Hemingway's 1917, § 1619; 1930, § 1582; 1942, § 1744; Laws, 1991, ch. 573, § 89, eff from and after July 1, 1991.

Cross References — Records of land office, see §§ 7-11-13 et seq.

What lands shall be conveyed only by a writing signed and delivered, see § 89-1-3.

Recording of United States or state patents, see § 89-5-11.

Evidence of public records generally, see Miss. R. Evid. 803.

JUDICIAL DECISIONS

1. In general.

Evidence held inadmissible to contradict official map on file in general land office. H. Weston Lumber Co. v. Strahan, 128 Miss. 54, 90 So. 452, 1921 Miss. LEXIS 298 (Miss. 1921).

Plaintiff introducing certificates from U. S. Land Office showing his entry of land involved and cancellation of prior entry under which defendants claimed, could bring ejectment. Gilleylen v. Isbel, 119 Miss. 566, 81 So. 161, 1919 Miss. LEXIS 24 (Miss. 1919).

This section [Code 1942, § 1744] is only rule of evidence, and establishes only prima facie title which may be defeated by paramount title. Halloway v. Miles, 110 Miss. 532, 70 So. 697, 1915 Miss. LEXIS 78 (Miss. 1915).

Plaintiff holding letter or writing signed by register of U. S. Land Office allowing his application to make homestead entry, may maintain ejectment. Methodist Episcopal Camp Ground Ass'n v. Brown, 105 Miss. 313, 62 So. 276, 1913 Miss. LEXIS 207 (Miss. 1913).

Receiver's certificate to one in possession of public lands claiming as homestead constitutes title supporting action for cutting and removing timber. Hiwannee Lumber Co. v. McPhearson, 95 Miss. 589, 49 So. 741, 1909 Miss. LEXIS 291 (Miss. 1909).

Grantee of certificate from register of land office holds full legal title to the land, and may maintain action thereon against a trespasser. Johnson v. Davis, 91 Miss. 708, 45 So. 979, 1907 Miss. LEXIS 207 (Miss. 1907).

The certificate vests title only when properly issued and while in full force and uncanceled. Where the certificate was indorsed "suspended for want of township plat," and was deposited in the general land-office at Washington City, but was sent to the plaintiff to be used for the purpose of testing his title to the land, and then to be returned, it was insufficient to vest title and sustain ejectment. Davis v. Freeland's Lessee, 32 Miss. 645, 1856 Miss. LEXIS 232 (Miss. 1856).

The statute gives to the certificate the effect of vesting a complete legal title, to all intents and purposes, in the person to whom issued and his assignees, and not simply to entitle the holder to recover the land in an action. Lindsey v. Henderson, 27 Miss. 502, 1854 Miss. LEXIS 86 (Miss. 1854).

A prior entry and a certificate thereof, without a patent, gives a better right in equity than a subsequent entry of the same land by another to whom a patent is issued; and a court of chancery, at the instance of the first enterer, will set aside the title of the patentee. Hester v. Kembrough, 20 Miss. 659, 1849 Miss. LEXIS 112 (Miss. 1849).

The certificate is but a substitute for a better title, and is not on an equal footing with a patent. If a patent be issued to another person to the same land after a certificate of entry to one without a patent, the holder of the patent will prevail in an action of ejectment against the holder of the certificate. Dickinson v. Brown, 17 Miss. 130, 1847 Miss. LEXIS 97 (Miss. 1847).

RESEARCH REFERENCES

Am. Jur.
29A Am. Jur. 2d (Rev), Evidence §§ 1226, 1227, 1229.

CJS.
32 C.J.S., Evidence §§ 1133, 1135.

§§ 13-1-133 through 13-1-147. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-1-133. [Codes, 1857, ch. 61, art. 238; 1871, § 684; 1880, § 1634; 1892, § 1798; 1906, § 1975; Hemingway's 1917, § 1635; 1930, § 1588; 1942, § 1751]

§ 13-1-135. [Codes, 1857, ch. 61, art. 239; 1871, § 685; 1880, § 1635; 1892, § 1799; 1906, § 1976; Hemingway's 1917, § 1636; 1930, § 1589; 1942, § 1752]

§ 13-1-137. [Codes, 1892, § 1800; 1906, § 1977; Hemingway's 1917, § 1637; 1930, § 1590; 1942, § 1753]

§ 13-1-139. [Codes, 1857, ch. 61, art. 237; 1871, § 683; 1880, § 1633; 1892, § 1797; 1906, § 1974, § 1974; Hemingway's 1917, § 1634; 1930, § 1587; 1942, § 1750]

§ 13-1-141. [Codes, 1871, § 782; 1880, § 1627; 1892, § 1801; 1906, § 1978; Hemingway's 1917, § 1638; 1930, § 1591; 1942, § 1754]

§ 13-1-143. [Codes, Hutchinson's 1848, ch. 60, art. 7; 1857, ch. 61, art. 241; 1871, § 819; 1880, § 1637; 1892, § 1803; 1906, § 1980; Hemingway's 1917, § 1640; 1930, § 1595; 1942, § 1758]

§ 13-1-145. [Codes, 1880, § 1639; 1892, § 1804; 1906, § 1981; Hemingway's 1917, § 1641; 1930, § 1596; 1942, § 1759]

§ 13-1-147. [Codes, Hutchinson's 1848, ch. 61, art. 1 (79); 1857, ch. 61, art. 224; 1871, § 688; 1880, § 2297; 1892, § 1809; 1906, § 1986; Hemingway's 1917, § 1646; 1930, § 1597; 1942, § 1760]

Editor's Notes — Former § 13-1-133 related to when partnership need not be proved.

Former § 13-1-135 related to when subscription of stock need not be proved.

Former § 13-1-137 related to when notice of dishonor of bills or notes need not be proved.

Former § 13-1-139 related to when signature, execution of instrument, identity or names of persons, or the like, need not be proved.

Former § 13-1-141 related to affidavit to correctness of account entitles affiant to judgment.

Former § 13-1-143 related to proof of publication of notices.

Former § 13-1-145 related to proof of posting of notice.

Former § 13-1-147 related to private acts of legislative as evidence although not specially pleaded.

§ 13-1-149. Courts to take notice of law of United States, other states, territories and foreign countries.

When any question shall arise as to the law of the United States, or of any other state or territory of the United States, or of the District of Columbia, or of any foreign country, the court shall take notice of such law in the same manner as if the question arose under the law of this state.

HISTORY: Codes, Hutchinson's 1848, ch. 60, art. 10; 1857, ch. 61, art. 226; 1871, § 805; 1880, § 2296; 1892, § 939; 1906, § 1015; Hemingway's 1917, § 735; 1930, § 1598; 1942, § 1761.

Cross References — Judicial notice of adjudicative facts, see Miss. R. Evid. 201.

JUDICIAL DECISIONS

1. In general.

Parties to controversy involving validity and effect of power of attorney which has not been acknowledged and recorded in manner of conveyance of land with respect to conveyance of real property situated in Greece may stipulate to application and enforcement of Mississippi rules of law, rather than otherwise applicable to Greek law; if parties do so, trial judge may proceed to adjudge all issues according to Mississippi law and enter final judgment which, subject to appeal, would not doubt be enforceable against parties in courts of Mississippi, even though, in Republic of Greece, judgment may not be worth paper it is written on. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Before court may resolve question of whether power of attorney which has not been acknowledged and recorded in manner provided for instruments of conveyance of interests in land is valid and enforceable with respect to real property located in Republic of Greece, Greek law must be consulted to determine whether there is conflict between laws of Mississippi and those of Greece with respect to real property and powers of attorney. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Proceeding for enforcement of purchase-money lien was not invalid because seller did not show notary public, before whom affidavit of seizure which was made in Ohio was taken, had authority to take and certify affidavits since court would take judicial notice of Ohio law authorizing notary public to administer and certify oaths. Parker v. McCaskey Register Co., 177 Miss. 347, 171 So. 337, 1936 Miss. LEXIS 277 (Miss. 1936).

Where right of action for employee's death was based on foreign statute, it was unnecessary to plead statute. Floyd v. Vicksburg Cooperage Co., 156 Miss. 567, 126 So. 395, 1930 Miss. LEXIS 196 (Miss. 1930).

Courts will take judicial notice of another state's statute regarding residence necessary to maintain divorce action. Williams v. State, 151 Miss. 82, 117 So. 360, 1928 Miss. LEXIS 280 (Miss. 1928).

In proceeding for custody of child in this state previous adjudication of another state not controlling. Haynie v. Hudgins, 122 Miss. 838, 85 So. 99, 1920 Miss. LEXIS 481 (Miss. 1920).

Injury occurring in Tennessee governed by Tennessee law. Turner v. Southern R. Co., 112 Miss. 359, 73 So. 62, 1916 Miss. LEXIS 119 (Miss. 1916).

Action cannot be maintained in Mississippi for death in Louisiana unless permitted by law of Louisiana. Runt v. Illinois C. R. Co., 88 Miss. 575, 41 So. 1, 1906 Miss. LEXIS 157 (Miss. 1906).

Courts will not take judicial notice of town ordinances. Naul v. State, 70 Miss. 699, 12 So. 903 (Miss. 1893).

RESEARCH REFERENCES

ALR.

Uniform Judicial Notice of Foreign Law Act. 23 A.L.R.2d 1437.

Reception of evidence to contradict or rebut matters judicially noticed. 45 A.L.R.2d 1169.

Judicial notice of matters relating to public thoroughfares and parks. 48 A.L.R.2d 1102.

Federal or state law as governing federal court's authority, in diversity action after Erie R. Co. v. Tompkins, to take judicial notice of law of sister state or foreign country. 7 A.L.R. Fed. 921.

Am. Jur.

29 Am. Jur. 2d (Rev), Evidence §§ 117, 125, 126, 128 et seq.

CJS.

31A C.J.S., Evidence §§ 30-33, 38.

§ 13-1-151. Reproduction of business records; disposal of originals.

Any business may cause any or all records kept by such business in the regular course of its operation to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic process which correctly, accurately and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such business may thereafter dispose of the original record, provided that every original record pertaining to any claim, tax or report due the State of Mississippi or any of its agencies shall be preserved for five (5) years from the thirty-first day of December of the year in which such claim arose, or such tax or report was due.

HISTORY: Codes, 1942, § 1761.5; Laws, 1964, ch. 488, §§ 1-5; Laws, 1991, ch. 573, § 90, eff from and after July 1, 1991.

Cross References — Admissibility of business records and copies, thereof, see Miss. R. Evid. 803 and 1001-1008.

JUDICIAL DECISIONS

1. In general.

A photostatic copy of a check from a purchaser of wood to the embezzler of it was properly admitted into evidence, and the original was not required, where absence of the original was explained and the photostatic copy was identified by an employee of the issuer of the check and the employee had signed the check. Bass v. State, 328 So. 2d 665, 1976 Miss. LEXIS 1812 (Miss. 1976).

RESEARCH REFERENCES

ALR.

Admissibility in evidence of enlarged photographs or photostatic copies. 72 A.L.R.2d 308.

Photographic representation or photostat of writing as primary or secondary evidence within best evidence rule. 76 A.L.R.2d 1356.

Letters to or from customers or suppliers as business records under statutes authorizing reception of business records in evidence. 68 A.L.R.3d 1069.

Admissibility in state court proceedings of police reports as business records. 77 A.L.R.3d 115.

Business records: authentication and verification of bills and invoices under Rule 803(6) of the Uniform Rules of Evidence. 1 A.L.R.4th 316.

Admissibility of computerized private business records. 7 A.L.R.4th 8.

Admissibility of school records under hearsay exemptions. 57 A.L.R.4th 1111.

Admissibility in state court proceedings of police reports as business records. 111 A.L.R.5th 1.

Admissibility of credit reports under Federal Business Records Act (28 USCS § 1732(a)). 19 A.L.R. Fed. 988.

Admissibility of records other than police reports, under Rule 803(6), Federal Rules of Evidence, providing for business records exception to hearsay rule. 61 A.L.R. Fed. 359.

Am. Jur.

29A Am. Jur. 2d (Rev), Evidence § 1099.

CJS.

32 C.J.S., Evidence §§ 1081, 1177, 1178 et seq.

§ 13-1-153. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991. [Codes, 1942, § 1761.7; Laws, 1966, ch. 525, § 1]

Editor's Notes — Former § 13-1-153 related to settlement of property damage claim under motor vehicle liability policy; effect.

§ 13-1-155. Destruction or other disposal of exhibits following final determination of civil actions.

After not less than ninety (90) days after the final determination or disposition of any civil action, or if an appeal shall have been taken, then after not less than ninety (90) days after receiving a certificate of the final disposition of the action, the clerk of the court in which the action was filed or tried shall destroy, return or otherwise dispose of all exhibits which were filed in the action. Provided, however, that no exhibit shall be destroyed, returned or otherwise disposed of until after the expiration of the time within which a bill of review may be filed in applicable cases as provided in Section 11-5-121, Mississippi Code of 1972. The clerk shall notify the attorneys for all parties to the action and the owner or person having custody of the property prior to the court action before the expiration of the ninety (90) day period that the exhibits may be claimed.

HISTORY: Laws, 1976, ch. 344, eff from and after passage (approved April 14, 1976).

Editor's Notes — Section 11-5-121 referred to in this section was repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

OPINIONS OF THE ATTORNEY GENERAL

A court clerk may destroy, return, or dispose of all exhibits 90 days after the final disposition of a civil action, if the time for an appeal has expired; if a party has perfected an appeal, then the court clerk may destroy, return, or dispose of all exhibits 90 days after receiving a certificate of the final disposition of the action. Parker, Mar. 30, 2001, A.G. Op #01-0159.

RESEARCH REFERENCES

ALR.

Consumption or destruction of physical evidence due to testing or analysis by prosecution's expert as warranting suppression of evidence or dismissal of case against accused in state court. 40 A.L.R.4th 594.

DISCOVERY PROCEEDINGS

Sec.
13-1-201. Repealed.
13-1-203 through 13-1-325. Reserved.
13-1-226. Repealed.
13-1-227. Depositions before action or pending appeal.
13-1-228. Repealed.
13-1-229. Stipulations regarding discovery procedure.
13-1-230 through 13-1-243. Repealed.
13-1-245. Bank expenses related to disclosure of customer's financial records.

§ 13-1-201. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991. [En Laws, 1975, ch. 501, § 1]

Editor's Notes — Former § 13-1-201 provided that §§ 13-1-226 through 13-1-237, and § 13-1-243 applied to civil proceedings in circuit, chancery, and county courts.

§§ 13-1-203 through 13-1-225. Reserved.

§ 13-1-226. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991. [En Laws, 1975, ch. 501, § 2]

Editor's Notes — Former § 13-1-226 contained general provisions governing discovery.

§ 13-1-227. Depositions before action or pending appeal.

(a) **Before action. —**

(1) **Petition. —** A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of this state may file a verified petition in the circuit or chancery

court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in a court of this state but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and his interest therein, (3) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, (4) the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) **Notice and service.** — The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing the notice shall be served in the same manner of service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided by law, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent.

(3) **Order and examination.** — If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with Sections 13-1-201, 13-1-226 through 13-1-237, 13-1-241, and 13-1-243; and the court may make orders of the character provided for by Section 13-1-234. For the purpose of applying Sections 13-1-201, 13-1-226 through 13-1-237, 13-1-241, and 13-1-243, to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) **Use of deposition.** — If a deposition to perpetuate testimony is taken under Sections 13-1-201, 13-1-226 through 13-1-237, 13-1-241, 13-1-243, it may be used in any action involving the same subject matter subsequently brought in a circuit, chancery or county court in accordance with Section 13-1-232(a).

(b) **Pending appeal.** — If an appeal has been taken from a judgment of a court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Section 13-1-234, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in Sections 13-1-201, 13-1-226 through 13-1-237, 13-1-241, and 13-1-243, for depositions taken in actions pending in the court.

(c) **Perpetuation by action. —** This section does not limit the power of a court to entertain an action to perpetuate testimony.

HISTORY: Laws, 1975, ch. 501, § 3, eff from and after January 1, 1976.

Editor's Notes — Sections 13-1-201, 13-1-226, 13-1-228, 13-1-230 to 13-1-237, 13-1-241 and 13-1-243 referred to in (a)(3), (a)(4) and (b) were repealed by Laws of 1991, ch. 573, § 141, effective from and after July 1, 1991.

Cross References — Award of attorney fees and costs against attorney or party who abuses discovery procedures available under the rules of civil procedure, see § 11-55-5.

Depositions in court-martial proceedings, see § 33-13-327.

Depositions before action or pending appeal, see Miss. R. Civ. P. 27.

JUDICIAL DECISIONS

1. In general.

Section 13-1-227 refers only to the taking of depositions before an action is commenced or pending an appeal, and does not apply to the taking of a deposition after a law suit is filed but before trial. Wallace v. Employers Mut. Casualty Co., 443 So. 2d 843, 1983 Miss. LEXIS 3027 (Miss. 1983).

RESEARCH REFERENCES

ALR.

Right to take depositions in perpetual remembrance for use in pending action. 70 A.L.R.2d 674.

Production and inspection of premises, persons, or things in proceeding to perpetuate testimony. 98 A.L.R.2d 909.

Use of videotape to take deposition for presentation at civil trial in state court. 66 A.L.R.3d 637.

Permissibility of testimony by telephone in state trial. 85 A.L.R.4th 476.

Right to perpetuation of testimony under Rule 27 of Federal Rules of Civil Procedure. 60 A.L.R. Fed. 924.

Taxation of costs associated with videotaped depositions under 28 U.S.C.S. § 1920 and Rule 54(d) of Federal Rules of Civil Procedure. 156 A.L.R. Fed. 311.

Am. Jur.

23 Am. Jur. 2d (Rev), Depositions and Discovery §§ 4, 83.

8 Am. Jur. Pl & Pr Forms (Rev), Depositions and Discovery, Forms 81 et seq. (depositions to perpetuate testimony before action).

8 Am. Jur. Pl & Pr Forms (Rev), Depositions and Discovery, Forms 111-114 (depositions to perpetuate testimony pending appeal).

11 Am. Jur. Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 891 et

seq. (depositions to perpetuate testimony before action).

11 Am. Jur. Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 911-913 (depositions to perpetuate testimony pending appeal).

For interpretative notes and decisions construing similar Rule 27 of the Federal Rules of Civil Procedure, see Court Rules volumes of the United States Code Service.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

Symposium on Mississippi Rules of Civil Procedure: Discovery-Rules 26-34, 36 and 37. 52 Miss. L. J. 119, March 1982.

§ 13-1-228. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991. [En Laws, 1975, ch. 501, § 4]

Editor's Notes — Former § 13-1-228 set forth persons before whom depositions could be taken.

§ 13-1-229. Stipulations regarding discovery procedure.

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by Sections 13-1-201, 13-1-226 through 13-1-237, 13-1-241, and 13-1-243, for other methods of discovery, except that stipulations extending the time provided in Sections 13-1-233, 13-1-234 and 13-1-236 for responses to discovery may be made only with the approval of the court.

HISTORY: Laws, 1975, ch. 501, § 5, eff from and after January 1, 1976.

Editor's Notes — Sections 13-1-201, 13-1-226, 13-1-228, 13-1-230 to 13-1-237, 13-1-241, and 13-1-243 referred to in this section were repealed by Laws of 1991, ch. 573, § 141, effective from and after July 1, 1991.

Cross References — Award of attorney fees and costs against attorney or party who abuses discovery procedures available under the rules of civil procedure, see § 11-55-5.

Stipulations regarding discovery procedure, see Miss. R. Civ. P. 29.

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. Pl & Pr Forms (Rev), Depositions and Discovery, Forms 1 et seq. (stipulations relating to depositions).

11 Am. Jur. Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 851-855 (stipulations relating to depositions).

For interpretative notes and decisions construing similar Rule 29 of the Federal Rules of Civil Procedure, see Court Rules volumes of the United States Code Service.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§§ 13-1-230 through 13-1-243.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.
§ 13-1-230. [En Laws, 1975, ch. 501, § 6]
§ 13-1-231. [En Laws, 1975, ch. 501, § 7]
§ 13-1-232. [En Laws, 1975, ch. 501, § 8]
§ 13-1-233. [En Laws, 1975, ch. 501, § 9]
§ 13-1-234. [En Laws, 1975, ch. 501, § 10]
§ 13-1-236. [En Laws, 1975, ch. 501, § 11]
§ 13-1-237. [En Laws, 1975, ch. 501, § 12]
§ 13-1-241. [En Laws, 1975, ch. 501, § 13]
§ 13-1-243. [En Laws, 1975, ch. 501, § 14]

Editor's Notes — Former § 13-1-230 governed the procedures for depositions upon oral examination.

Former § 13-1-231 provided for procedures for depositions upon written questions.

Former § 13-1-232 provided for the use of depositions in court proceedings.

Former § 13-1-233 provided for the service of interrogatories upon parties and the use of responses at trial.

Former § 13-1-234 provided for inspection by a party of documents or other evidence in another's possession, and it prescribed procedure for entry upon another's land for inspection.

Former § 13-1-236 governed requests for admission.

Former § 13-1-237 provided remedies and sanctions for failure to comply with discovery.

Former § 13-1-241 governed methods of service of notices and other papers issued under §§ 13-1-226 through 13-1-237, and § 13-1-243.

Former § 13-1-243 excluded discovery expenses from court costs.

§ 13-1-245. Bank expenses related to disclosure of customer's financial records.

(1) As used in this section:

(a) "Bank" means any state or national bank located in Mississippi.

(b) "Custodian" includes a bank's operations officer and any other person who is an official custodian of the bank's records, as well as their deputies and assistants.

(c) "Customer" means any person or authorized representative of a person who has maintained or is maintaining an account or deposit of any type, or has utilized or is utilizing any service of a bank, or for whom a bank has acted or is acting as a fiduciary in relation to an account or deposit maintained in the person's name.

(d) "Financial record" means any record in any form, or information derived from such record, that is maintained by a bank and pertains to a deposit or account of a customer, a service of the bank utilized by a customer or any other relationship between a customer and the bank.

(e) "Governmental authority" includes the state, any political subdivision, district and court, and any agency, department, officer or authorized employee of any of those entities.

(2) In any state court proceeding, if any party, including a governmental authority, requests a subpoena duces tecum (to be construed hereinafter to include a court order) to require a bank to assemble or provide a customer's financial records, and the bank is not a party to the proceeding or is a party solely by reason of its holding assets of another party defendant with no cause of action alleged against the bank, the party requesting the subpoena shall pay to the court conducting the proceeding all reasonable charges of the bank in searching for, reproducing and transporting the records. This payment shall be made promptly when the copy of the records is delivered to the proper person, as provided in subsection (4) of this section, whether or not the financial records are entered into evidence, and the amount of the payment shall be the amount certified by the custodian in the affidavit required by subsection (6) of this section. The payment of these reasonable charges shall be in addition to any witness fees.

(3) Except as hereinafter provided, when a subpoena duces tecum is served upon a custodian of records of any bank in any state court proceeding in which the bank is not a party, or in which the bank is a party solely by reason of its holding assets of another party defendant with no cause of action alleged against the bank, and such subpoena requires the production of a customer's financial records, it shall be deemed sufficient compliance if the custodian shall furnish a true and correct copy of all records described in the subpoena.

(4) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness and date of subpoena clearly inscribed thereon. The sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows: If the subpoena directs attendance in court, to the clerk of such court or to the judge thereof; if the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at a place designated in the subpoena for the taking of the deposition or at his place of business; in other cases, to the officer, body or tribunal conducting the hearing, at a like address.

(5) Unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition or other hearing, upon the direction of the judge, court, officer, body or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition or hearing. However, the sealed envelope or wrapper may be opened and the records examined prior to the trial, deposition or hearing upon written consent of all parties or their counsel of record.

(6) The records shall be accompanied by an affidavit of a custodian stating in substance: (a) that the affiant is a duly authorized custodian of the records and has authority to certify such records; (b) that the copy is a true copy of all the records described in the subpoena; (c) that the records were prepared by the personnel of the bank, bank officers or persons acting under the control of either, in the ordinary course of the bank's business at or near the time of the

act, condition or event reported therein; and (d) certifying the amount of the reasonable charges of the bank for furnishing such copies. If the bank has none of the records described or only part thereof, the custodian shall so state in the affidavit and furnish the affidavit and such records as are available. The furnishing of the affidavit with respect to such reasonable charges shall be sufficient proof of such expense, which shall be taxed as costs of the court. All reasonable charges paid hereunder shall be remitted to the bank not later than final determination of the suit by the court where the suit is initiated.

(7) The copy of the record shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit. The affidavit shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of a preponderance of evidence to the contrary.

(8) In rare cases where the personal attendance of the custodian may be required, the subpoena duces tecum shall contain a clause which reads: "The procedure authorized pursuant to subsection (3) of this section will not be deemed sufficient compliance with this subpoena."

(9) In rare cases where the personal attendance of the custodian and the production of the original record may be required, the subpoena duces tecum shall contain a clause which reads: "Original records are required and the procedure authorized pursuant to subsection (3) of this section will not be deemed sufficient compliance with this subpoena."

If the bank does not have such original record, it shall furnish such copies as it may have and shall be compensated as provided for in this section.

(10) Original records may be withdrawn after introduction into evidence and copies substituted, unless otherwise directed for good cause by the court, judge, officer, body or tribunal conducting the hearing. The custodian may prepare copies of original records in advance of testifying for the purpose of making substitution of the original record, and reasonable charges for furnishing such copies shall be taxed as costs of the court. If copies are not prepared in advance, they can be made and substituted at any time after introduction of the original record, and reasonable charges for furnishing such copies shall be taxed as costs of the court.

HISTORY: Laws, 1984, ch. 383, eff from and after July 1, 1984.

Cross References — General duty of nondisclosure of depositors' names, see § 81-5-55.

RESEARCH REFERENCES

ALR.

Existence of fiduciary relationship between bank and depositor or customer so as to impose special duty of disclosure upon bank. 70 A.L.R.3d 1344.

Admissibility of computerized private business records. 7 A.L.R.4th 8.

Dismissal of state court action for failure or refusal of plaintiff to obey request or order for production of documents or other objects. 27 A.L.R.4th 51.

Am. Jur.

23 Am. Jur. 2d, Depositions and Discovery §§ 231- 235.

29A Am. Jur. 2d, Evidence § 836.

29A Am. Jur. 2d, Evidence § 1255.

CJS.
32 C.J.S., Evidence §§ 1197, 1198
32A C.J.S., §§ 1202, 1259, 1278, 1351-1355.
27 C.J.S., Discovery §§ 122-129.
32 C.J.S., Evidence §§ 1197, 1198; 32A C.J.S., §§ 1202, 1259, 1278, 1351-1355.

EXAMINATION OF JUDGMENT DEBTOR BY JUDGMENT CREDITOR

Sec.	
13-1-261.	Judgment creditor's right to examination of judgment debtor.
13-1-263.	Venue for filing motion for examination and for conducting examination.
13-1-265.	Order to appear for examination; effect of satisfaction of judgment.
13-1-267.	Swearing of judgment debtor; use of testimony of judgment debtor in criminal proceeding.
13-1-269.	Court costs.
13-1-271.	Contempt.

§ 13-1-261. Judgment creditor's right to examination of judgment debtor.

(1) To aid in the satisfaction of a judgment of more than One Hundred Dollars ($100.00), the judgment creditor may examine the judgment debtor, his books, papers or documents, upon any matter relating to his property as provided in Sections 13-1-261 through 13-1-271; except that no single judgment creditor may cause a judgment debtor to submit to examination under this section more than once in a period of six (6) months.

(2) In addition to the method of examination prescribed in subsection (1), the judgment creditor may, in the alternative, utilize the discovery procedures set forth in the Mississippi Rules of Civil Procedure for the purpose of examining the judgment debtor.

HISTORY: Laws, 1976, ch. 381, § 1; Laws, 1977, ch. 407; Laws, 1991, ch. 573, § 91, eff from and after July 1, 1991.

Cross References — Depositions and discovery, see Miss. R. Civ. P. 26 through 37.

Judgment creditor's examination of judgment debtor or other persons, see Miss. R. Civ. P. 69.

Enforcement of judgments, see Uniform Rule of Procedure for Justice Court 2.15.

JUDICIAL DECISIONS

1. In general.

A judgment creditor may conduct a post-judgment examination of a third party who is not employed by nor an agent of the judgment debtor, but such an examination is limited in scope to nonprivileged matters which are relevant to the judgment creditor's allegations that the judgment debtor has assets which properly should be discovered and used to satisfy the judgment. Ex parte Burchinal, 571 So. 2d 281, 1990 Miss. LEXIS 723 (Miss. 1990).

Circuit Court properly ordered examination of judgment debtor and production of documents in county where suit was filed, where judgment debtor had waived its right to argue that it could not be found in that county, and thus statute concerning examination of judgment debtor by judgment creditor was construed consistently with venue already established for trial of action. H & W Transfer & Cartage Service, Inc. v. Griffin, 511 So. 2d 895, 1987 Miss. LEXIS 2610 (Miss. 1987).

OPINIONS OF THE ATTORNEY GENERAL

A plaintiff may not file an examination of a judgment debtor more than once every six months, however there is no limit to the number of examinations that may be filed. Strahan, June 11, 2004, A.G. Op. 04-0249.

RESEARCH REFERENCES

Am. Jur.
30 Am. Jur. 2d, Execution of Judgments §§ 1 et seq.

CJS.
49 C.J.S., Judgments §§ 919-921, 923 et seq.

§ 13-1-263. Venue for filing motion for examination and for conducting examination.

(1) Except as provided in subsection (2) of this section, the written motion for the examination of a judgment debtor shall be filed, and the proceedings conducted, in the court which rendered the judgment.

(2) If the judgment debtor is an individual who is domiciled in the state but not in the county where the judgment was rendered, or who has changed his domicile to another county after the institution of the suit, the written motion for his examination shall be filed, and the examination conducted, in a court of competent jurisdiction in the county of his then domicile. If the judgment debtor is a nonresident, the petition for his examination shall be filed, and the examination conducted, in a court of competent jurisdiction in any county where he may be found. In any case mentioned in this paragraph, a certified copy of the judgment shall be attached to the written motion for examination.

HISTORY: Laws, 1976, ch. 381, § 2, eff from and after passage (approved April 26, 1976).

Cross References — Rule governing judgment creditor's examination of judgment debtor or other persons, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Circuit Court properly ordered examination of judgment debtor and production of documents in county where suit was filed, where judgment debtor had waived its right to argue that it could not be found in that county, and thus statute concerning examination of judgment debtor by judgment creditor was construed consistently with venue already established for trial of action. H & W Transfer & Cartage Service, Inc. v. Griffin, 511 So. 2d 895, 1987 Miss. LEXIS 2610 (Miss. 1987).

OPINIONS OF THE ATTORNEY GENERAL

Where a person received a judgment in in the county of his residence against a defendant who is a resident of another county, since, pursuant to this section, the motion for examination is filed and the examination occurs in the county of the domicile of the defendant the fee would likewise be received by the court of that county. Court costs in connection with examination should be taxed against the judgment debtor unless the court determines that the creditor invoked the remedy needlessly, in which case the court may tax the costs against the creditor. Carlisle, Dec. 10, 2004, A.G. Op. 04-0607.

§ 13-1-265. Order to appear for examination; effect of satisfaction of judgment.

On ex parte written motion of the judgment creditor, personally or through his attorney, the court shall order the judgment debtor to appear in court for examination at a time fixed by the court, not less than five (5) days from the date of service on him of the motion and order, and to produce any books, papers, and other documents relating to his property described in the motion; provided, however, that satisfaction of the judgment shall discharge the judgment debtor from his responsibility to appear for the examination as ordered by the court.

HISTORY: Laws, 1976, ch. 381, § 3, eff from and after passage (approved April 26, 1976).

Cross References — Rule governing judgment creditor's examination of judgment debtor or other persons, see Miss. R. Civ. P. 69.

OPINIONS OF THE ATTORNEY GENERAL

An order to appear for an examination of judgment debtor should be served as in other civil cases and, therefore, may be posted on the door of the defendant's usual place of abode; however, service of process by means of posting on a door would not subject a defendant to contempt for failure to appear for an examination of judgment debtor hearing. Parker, May 3, 2002, A.G. Op. #02-0225.

Where a person received a judgment in in the county of his residence against a defendant who is a resident of another county, the motion of the judgment debtor filed in the county of domicile of the defendant and the order entered by that court should be served on the defendant by a process server. Carlisle, Dec. 10, 2004, A.G. Op. 04-0607.

§ 13-1-267. Swearing of judgment debtor; use of testimony of judgment debtor in criminal proceeding.

(1) The debtor shall be sworn to tell the truth in the same manner as a witness in a civil action.

(2) No testimony given by a debtor shall be used in any criminal proceeding against him, except for perjury committed at such examination.

HISTORY: Laws, 1976, ch. 381, § 4, eff from and after passage (approved April 26, 1976).

Cross References — Rule governing judgment creditor's examination of judgment debtor or other persons, see Miss. R. Civ. P. 69.

§ 13-1-269. Court costs.

Court costs in connection with the examination shall be taxed against the judgment debtor, except that if the court determines that the creditor invoked the remedy needlessly, the court may tax the costs against the creditor.

HISTORY: Laws, 1976, ch. 381, § 5, eff from and after passage (approved April 26, 1976).

§ 13-1-271. Contempt.

If the motion and order have been served personally on the judgment debtor, and he refuses to appear for the examination or to produce his books, papers, or other documents when ordered to do so, or if he refuses to answer any question held pertinent by the court, he may be punished for contempt.

HISTORY: Laws, 1976, ch. 381, § 6, eff from and after passage (approved April 26, 1976).

OPINIONS OF THE ATTORNEY GENERAL

Failure to comply with a court's order for the examination of a judgment debtor amounts to civil contempt, and a defendant should be sentenced accordingly. Boykin, Oct. 6, 2000, A.G. Op. #2000-0586.

If a defendant fails to appear for an examination of judgment debtor hearing after being personally served, the court may issue a contempt warrant for the defendant's arrest. The defendant may be jailed until he complies with the examination of judgment debtor order. Strahan, June 11, 2004, A.G. Op. 04-0249.

INTERPRETERS FOR THE DEAF

Sec.
13-1-301. Definitions.
13-1-303. Appointment of interpreter; court proceedings; policy custody; statements of deaf person as evidence.
13-1-305. Hearing to determine need for interpreter; notification of need.
13-1-307. Duties of interpreter.
13-1-309. Repealed.
13-1-311. List of qualified interpreters.
13-1-313. Affirmation of true interpretation.
13-1-315. Fees for interpreters.

§ 13-1-301. Definitions.

As used in Sections 13-1-301 through 13-1-315 the following terms shall have the definition ascribed to them herein unless the context requires otherwise:

(a) "Deaf person" means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications when spoken to in a normal conversational tone. The term further includes, but is not limited to, a person who is mute and a person who is both deaf and mute.

(b) "Qualified interpreter" means an interpreter certified by the national registry of interpreters for the deaf, Mississippi Registry of Interpreters for the Deaf or, in the event a qualified interpreter so certified is not available, an interpreter whose qualifications are otherwise determined. Efforts to obtain the services of a qualified interpreter qualified with a legal skills certificate or a comprehensive skills certificate will be made prior to accepting services of an interpreter with lesser certification. No qualified interpreter may be appointed unless the appointing authority and the deaf person make a preliminary determination that the interpreter is able to interpret accurately the statements of the deaf person and interpret the proceedings in which a deaf person may be involved.

(c) "Oral interpreter" means a person who interprets language through facial and lip movements only and who does not use manual communication. An oral interpreter shall be provided upon the request of a deaf person who does not communicate in sign language. The right of a deaf person to have an interpreter may not be waived except by a deaf person who does not use sign language and who initiates such request for waiver in writing. Such waiver is subject to approval of counsel of such deaf person, if existent, and is subject to approval of the appointing authority.

HISTORY: Laws, 1984, ch. 414, § 1, eff from and after July 1, 1984.

Cross References — Appointment of interpreter, see Uniform Rule of Procedure for Justice Court 1.15.

RESEARCH REFERENCES

ALR.

Criminal trial of deaf, mute, or blind person. 80 A.L.R.2d 1084.

Right of accused to have evidence or court proceedings interpreted. 36 A.L.R.3d 276.

Disqualification for bias of one offered as interpreter of testimony. 6 A.L.R.4th 158.

Admissibility of testimony concerning extrajudicial statements made to, or in presence of, witness through an interpreter. 12 A.L.R.4th 1016.

Ineffective assistance of counsel: use or nonuse of interpreter at prosecution of hearing-impaired defendant. 86 A.L.R.4th 698.

Am. Jur.

75 Am. Jur. 2d, Trials §§ 105- 107.

CJS.

88 C.J.S., Trial § 112.

§ 13-1-303. Appointment of interpreter; court proceedings; policy custody; statements of deaf person as evidence.

(1) In any case in law or equity before any court or the grand jury, wherein any deaf person is a party to such action, either as a defendant or witness, the court shall appoint a qualified interpreter of the deaf sign language to interpret

the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) Whenever any deaf person is a party in interest, either as a defendant or witness at a proceeding before any department, board, commission, agency or licensing authority of the state or any political subdivision of the state, the department, board, commissioner, agency or licensing authority conducting the proceedings shall appoint a qualified interpreter of the deaf sign language to interpret the proceedings to the deaf person and to interpret any testimony he may give.

(3) In the event that a deaf person has been detained in police custody or has been arrested for any alleged violation of a criminal law, a qualified interpreter or, upon request, an oral interpreter shall be provided by the arresting officer and his superiors prior to any interrogation or taking of a statement from the person.

(4) In the event any interrogation statements in writing are made to the arresting officer by the deaf person with the qualified interpreter present, such interrogation and answers thereto shall be preserved and turned over to the court in the event such person is tried for the alleged offense.

(5) Any statement made by a deaf person to a law enforcement officer may be used as evidence against that person only if the statement was made, offered or elicited in the presence of a qualified interpreter of the deaf sign language. No statements taken from such deaf person prior to the presence of a qualified interpreter may be admissible in court.

HISTORY: Laws, 1984, ch. 414, § 2, eff from and after July 1, 1984.

Cross References — Duty of state to support institutions for the deaf, see Miss. Const. Art. 8, § 209.

Registration of persons with impaired hearing, see § 37-23-123.

Schools for the deaf, see §§ 43-5-1 et seq.

Rights and liabilities of deaf persons generally, see §§ 43-6-1 et seq.

Appointment of interpreter in criminal cases, see § 99-17-7.

JUDICIAL DECISIONS

1. In general.

Trial court properly denied defendant's motion for postconviction relief on his claim that he was denied due process by the State's failure to provide an interpreter during his arrest, interrogation, and pretrial matters because there was no evidence in the record concerning the precourt events other than defendant's verified motion which was not even supported by his own affidavit; the trial court did not err by denying defendant's motion on incompetency grounds because no evidence was presented by defendant to support his claim of mental incompetency. Easterling v. State, — So. 3d —, 2019 Miss. App. LEXIS 116 (Miss. Ct. App. Mar. 26, 2019).

A search pursuant to a defendant's consent was constitutionally valid, even though the defendant, who was deaf, was not afforded an interpreter in accordance with § 13-1-303(3), where the testimony of the law enforcement officers clearly indicated that the defendant understood what he was doing when he agreed to the search, the defendant was asked questions to which he gave appropriate responses, he was specifically told that he did not have to consent to the search, both the request for and the granting of the consent were done in writing, and the defendant used communicative and cognitive faculties other than hearing when he consented to the search. Shook v. State, 552 So. 2d 841, 1989 Miss. LEXIS 449 (Miss. 1989).

RESEARCH REFERENCES

ALR.

Criminal trial of deaf, mute, or blind person. 80 A.L.R.2d 1084.

Right of accused to have evidence or court proceedings interpreted. 36 A.L.R.3d 276.

Disqualification for bias of one offered as interpreter of testimony. 6 A.L.R.4th 158.

Admissibility of testimony concerning extrajudicial statements made to, or in presence of, witness through an interpreter. 12 A.L.R.4th 1016.

Deaf-mute as witness. 50 A.L.R.4th 1188.

Ineffective assistance of counsel: use or nonuse of interpreter at prosecution of hearing-impaired defendant. 86 A.L.R.4th 698.

Am. Jur.

75 Am. Jur. 2d, Trials § 107.

CJS.

88 C.J.S., Trial § 112.

§ 13-1-305. Hearing to determine need for interpreter; notification of need.

If the judge, or any other person charged under the provisions of Sections 13-1-301 through 13-1-315 with providing an interpreter, believes that a person claiming to be entitled to an interpreter may not actually be deaf or hearing impaired, unable to communicate verbally because of his hearing disability, or otherwise not entitled to such services, the judge may, on good cause shown, hold a hearing to determine the extent of the person's handicap or disability and the bona fide need for interpreting services. If it is determined that the person is not entitled to such services, an interpreter shall not be provided. Except in a preliminary hearing in a criminal case, every deaf person whose appearance before a proceeding entitles him to an interpreter shall notify the appointing authority of his disability not less than five (5) days prior to any appearance and shall request at such time the services of an interpreter. When a deaf person reasonably expects to need an interpreter for more than a single day, he shall so notify the appointing authority, and such notification shall be sufficient for the duration of his participation in the proceedings. When a deaf person receives notification of an appearance less than five (5) days before such appearance, he shall provide his notification and request for an interpreter as soon thereafter as practicable.

HISTORY: Laws, 1984, ch. 414, § 3, eff from and after July 1, 1984.

Cross References — Registration of persons with impaired hearing, see § 37-23-123.

Rights and liabilities of deaf persons generally, see §§ 43-6-1 et seq.

RESEARCH REFERENCES

ALR.

Criminal trial of deaf, mute, or blind person. 80 A.L.R.2d 1084.

Right of accused to have evidence or court proceedings interpreted. 36 A.L.R.3d 276.

Disqualification for bias of one offered as interpreter of testimony. 6 A.L.R.4th 158.

Admissibility of testimony concerning extrajudicial statements made to, or in presence of, witness through an interpreter. 12 A.L.R.4th 1016.

Ineffective assistance of counsel: use or nonuse of interpreter at prosecution of hearing-impaired defendant. 86 A.L.R.4th 698.

Am. Jur.

75 Am. Jur. 2d (Rev), Trials §§ 105- 107.

CJS.

88 C.J.S., Trial § 112.

§ 13-1-307. Duties of interpreter.

The duties of the interpreter may include:

(a) Interpreting during court and court-related proceedings, including any and all meetings and conferences between client and his attorney;

(b) Translating or interpreting documents;

(c) Assisting in taking depositions;

(d) Assisting in administering oaths; and

(e) Such other duties as may be required by the judge of the court making the appointment.

HISTORY: Laws, 1984, ch. 414, § 4, eff from and after July 1, 1984.

RESEARCH REFERENCES

ALR.

Criminal trial of deaf, mute, or blind person. 80 A.L.R.2d 1084.

Right of accused to have evidence or court proceedings interpreted. 36 A.L.R.3d 276.

Disqualification for bias of one offered as interpreter of testimony. 6 A.L.R.4th 158.

Admissibility of testimony concerning extrajudicial statements made to, or in presence of, witness through an interpreter. 12 A.L.R.4th 1016.

Am. Jur.

75 Am. Jur. 2d (Rev), Trials §§ 105- 107.

CJS.

88 C.J.S., Trial § 112.

§ 13-1-309. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991. [En Laws, 1984, ch. 414, § 5]

Editor's Notes — Former § 13-1-309 made communications through an interpreter for the deaf between an attorney and client privileged.

§ 13-1-311. List of qualified interpreters.

It shall be the responsibility of the appointing authority to channel requests for qualified interpreters through (a) the Mississippi Registry of Interpreters for the Deaf; (b) the community services program at the Mississippi School for the Deaf, or, (c) any community resource wherein the appointing authority or the deaf person is knowledgeable that such qualified interpreters can be found. It shall be the responsibility of the community services program at the Mississippi School for the Deaf to compile and update annually a listing of qualified interpreters and to make this listing available to authorities in possible need of interpreter services as provided in Sections 13-1-301 through 13-1-315.

HISTORY: Laws, 1984, ch. 414, § 6, eff from and after July 1, 1984.

Cross References — Mississippi School for the Deaf, see Miss. Const. Art. 8, § 209 and Code § 43-5-1 et seq.

Rights and liabilities of deaf persons generally, see §§ 43-6-1 et seq.

RESEARCH REFERENCES

ALR.

Criminal trial of deaf, mute, or blind person. 80 A.L.R.2d 1084.

Right of accused to have evidence or court proceedings interpreted. 36 A.L.R.3d 276.

Disqualification for bias of one offered as interpreter of testimony. 6 A.L.R.4th 158.

Admissibility of testimony concerning extrajudicial statements made to, or in presence of, witness through an interpreter. 12 A.L.R.4th 1016.

CJS.

88 C.J.S. Trials § 52.

§ 13-1-313. Affirmation of true interpretation.

Before participating in any proceedings subsequent to an appointment under the provisions of Sections 13-1-301 through 13-1-315, an interpreter shall make an oath or affirmation that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such persons in the English language to the best of his skill and judgment. The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter so indicates.

HISTORY: Laws, 1984, ch. 414, § 7, eff from and after July 1, 1984.

Cross References — Oath or affirmation of witness, see Miss. R. Evid. 603.

RESEARCH REFERENCES

ALR.

Criminal trial of deaf, mute, or blind person. 80 A.L.R.2d 1084.

Right of accused to have evidence or court proceedings interpreted. 36 A.L.R.3d 276.

Disqualification for bias of one offered as interpreter of testimony. 6 A.L.R.4th 158.

Admissibility of testimony concerning extrajudicial statements made to, or in presence of, witness through an interpreter. 12 A.L.R.4th 1016.

CJS.

88 C.J.S., Trial § 112.

§ 13-1-315. Fees for interpreters.

An interpreter appointed under the provisions of Sections 13-1-301 through 13-1-315 shall be entitled to a reasonable fee for such services in addition to actual expenses for travel and transportation. The court or appointing authority may consider standards established by the Mississippi Registry of Interpreters for the Deaf in determining a reasonable fee. When the interpreter is appointed by a court in a criminal case the fee shall be paid out of the general fund of the state, county or municipality, as the case may be. An interpreter's fee in a civil action shall be paid out of funds provided by law or by one or more of the parties as the court may direct and may be taxed ultimately as costs in the discretion of the court. When an interpreter is provided by an appointing authority pursuant to subsection (2) of Section 13-1-303, the fee shall be paid out of funds available to the appointing authority.

HISTORY: Laws, 1984, ch. 414, § 8, eff from and after July 1, 1984.

RESEARCH REFERENCES

ALR.

Criminal trial of deaf, mute, or blind person. 80 A.L.R.2d 1084.

Right of accused to have evidence or court proceedings interpreted. 36 A.L.R.3d 276.

Disqualification for bias of one offered as interpreter of testimony. 6 A.L.R.4th 158.

Admissibility of testimony concerning extrajudicial statements made to, or in presence of, witness through an interpreter. 12 A.L.R.4th 1016.

Am. Jur.

75 Am. Jur. 2d (Rev), Trials §§ 105- 107.

CJS.

88 C.J.S., Trial § 112.

EVIDENCE OF CHILD ABUSE

Sec.
13-1-401. Applicability of special evidentiary provisions.
13-1-403. Admissibility of child's out-of-court statements.
13-1-405. Use of closed circuit television to show child's testimony.
13-1-407. Use of child's videotaped testimony; protective orders; destruction of videotape.
13-1-409. Expert testimony as to meaning of child's testimony; appointment of expert.
13-1-411. Behavioral indicators used to determine applicability of evidentiary provisions.
13-1-413. Court's power to prohibit contact with child not affected by evidentiary provisions.
13-1-415. Implementation of evidentiary provisions by rule.

§ 13-1-401. Applicability of special evidentiary provisions.

The rules of evidence prescribed in Sections 13-1-401 through 13-1-415 shall be applicable in any youth court proceeding and in any criminal prosecution under the following sections of the Mississippi Code of 1972:

(a) Section 97-5-21, Mississippi Code of 1972, relating to seduction of a child under age eighteen (18);

(b) Section 97-5-23, Mississippi Code of 1972, relating to the touching of a child for lustful purposes;

(c) Section 97-5-35, Mississippi Code of 1972, relating to the exploitation of children;

(d) Section 97-5-39, Mississippi Code of 1972, relating to contributing to the neglect or delinquency of a child and felonious battery of a child;

(e) Section 97-5-41, Mississippi Code of 1972, relating to the carnal knowledge of a stepchild, adopted child or child of a cohabitating partner;

(f) Section 97-3-95, Mississippi Code of 1972, relating to sexual battery; or

(g) Section 97-29-59, Mississippi Code of 1972, relating to unnatural intercourse.

HISTORY: Laws, 1986, ch. 345, § 1, eff from and after July 1, 1986.

Editor's Notes — Section 97-5-21 referred to in (a) was repealed by Laws, 1998, ch. 549, § 7, effective from and after July 1, 1998. For similar provisions, see §§ 97-3-65, 97-3-95, 97-5-23, and 97-3-101.

RESEARCH REFERENCES

Law Reviews.

Comment: Recent amendments to the Mississippi Rules of Evidence – the rights of the victim v. the rights of the accused in child abuse prosecutions and dependency or neglect proceedings. 61 Miss. L. J. 367 (Fall 1991).

§ 13-1-403. Admissibility of child's out-of-court statements.

(1) An out-of-court statement made by a child under the age of twelve (12) describing any act of child abuse, sexual abuse or any other offense involving an unlawful sexual act, contact, intrusion or penetration performed in the presence of, with, by or on the declarant child, not otherwise admissible, is admissible in evidence to prove the contents thereof, if:

(a) Such statement is made for the purpose of receiving assistance or advice in order to prevent or mitigate the recurrence of the offenses, or in order to obtain advice about the psychological, social or familial consequences associated with the offenses; and

(b) Such statement is made to a person on whom the child should reasonably be able to rely for assistance, counseling or advice; and

(c) The child either:

(i) Is available to testify; or

(ii) Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. A finding of unavailability, except in those situations specified by Rule 804 of the Mississippi Rules of Evidence, shall require a finding by the court, based on the specific behavioral indicators described in Section 13-1-411, that the child's participation in the trial would result in a substantial likelihood of traumatic emotional or mental distress; and

(d) The court finds in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient guarantees of trustworthiness. In determining the trustworthiness of the statement, the court may consider the age and maturity of the child, the nature and duration of the abuse or offense alleged, factors which may detract from the declarant's credibility, information provided about the child's reliability based on the specific behavioral indicators described in Section 13-1-411, or any other factor deemed appropriate.

(2) The defendant shall be notified no later than ten (10) days before trial that an out-of-court statement as described in this section shall be offered in evidence at trial. The notice shall include a written statement of the content of the child's statement, the time the statement was made, the circumstances surrounding the statement which indicate its reliability and such other particulars as necessary to provide full disclosure of the statement.

(3) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

HISTORY: Laws, 1986, ch. 345, § 2, eff from and after July 1, 1986.

JUDICIAL DECISIONS

1. In general.

Since the promulgation of rules for the regulation of trial lie at the core of the judicial power, officers of neither the legislative nor executive departments of government, acting jointly or severally, had authority to confer legal validity upon the Evidence of Child Sexual Abuse Act. As that act enjoys no legal validity, it may not be regarded as "law" within Rule 802, Miss. R. Ev., which declares that hearsay is not admissible "except as provided by law." Thus, a child's out-of-court statements of complaints against his father were inadmissible in a child sexual battery prosecution of the father even though expert testimony indicated that the child would experience traumatic or emotional distress if he were required to testify against his father in open court. Hall v. State, 539 So. 2d 1338, 1989 Miss. LEXIS 104 (Miss. 1989).

RESEARCH REFERENCES

ALR.

Requiring complaining witness in prosecution for sex crime to submit to psychiatric examination. 18 A.L.R.3d 1433.

Accused's right to depose prospective witnesses before trial in state court. 2 A.L.R.4th 704.

Instructions to jury as to credibility of child's testimony in criminal case. 32 A.L.R.4th 1196.

Admissibility or use in criminal trial of testimony given at preliminary proceeding by witness not available at trial. 38 A.L.R.4th 378.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 A.L.R.4th 310.

Sufficiency of evidence to establish parent's knowledge or allowance of child's sexual abuse by another under statute permitting termination of parental rights for "allowing" or "knowingly allowing" such abuse to occur. 53 A.L.R.5th 499.

Validity, construction, and application of child hearsay statutes. 71 A.L.R.5th 637.

Am. Jur.

6 Am. Jur. 2d, Assault and Battery §§ 125- 135.

41 Am. Jur. 2d, Incest §§ 27- 29, 38.

65 Am. Jur. 2d, Rape §§ 40-65.

70C Am. Jur. 2d, Sodomy §§ 25-29.

2 Am. Jur. Proof of Facts 2d, pp 365-465, Child abuse-the battered child syndrome.

35 Am. Jur. Proof of Facts 2d 665, Qualifying Child Witness to Testify.

18 Am. Jur. Trials, pp 342-441, Cross-examination in rape prosecution.

CJS.

75 C.J.S., Rape §§ 61–114.

81A C.J.S., Sodomy §§ 6-11.

§ 13-1-405. Use of closed circuit television to show child's testimony.

(1) Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her, or that he or she witnessed its perpetration upon another child, be taken outside of the courtroom and shown in the courtroom by means of closed circuit television, upon a finding based on specific behavioral indicators described in Section 13-1-411, that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court.

(2) The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, or any party to the case. The court may also raise the matter on its own motion.

(3) Upon stipulation of the parties, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting concerning the offense to aid in formulating methods of questioning the child and to assist the court in interpreting the answers of the child.

(4) Closed circuit television testimony may be taken by any method not inconsistent with the Mississippi Rules of Civil Procedure and the Mississippi Uniform Criminal Rules of Circuit Court Practice. After a determination that the defendant's presence would cause a substantial likelihood of traumatic emotional or mental distress to the child, the judge may exclude the defendant from the room where the testimony is taken. In any case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant and the jury must be able to observe the demeanor of the child witness at all times during the questioning.

(5) The court shall make specific findings of fact, on the record, as to the basis for its rulings under this section.

(6) All parties must be represented by counsel at any taking of any testimony under this section.

HISTORY: Laws, 1986, ch. 345, § 3, eff from and after July 1, 1986.

Cross References — Rights of children testifying in criminal proceedings, see § 99-43-101.

Use of depositions in court proceedings, see Miss. R. Civ. P. 32.

Form and admissibility of evidence generally, see Miss. R. Civ. P. 43.

RESEARCH REFERENCES

ALR.

Requiring complaining witness in prosecution for sex crime to submit to psychiatric examination. 18 A.L.R.3d 1433.

Admissibility of videotape film in evidence in criminal trial. 60 A.L.R.3d 357.

Propriety of allowing absent witness to be examined over closed-circuit television. 80 A.L.R.3d 1212.

Instructions to jury as to credibility of child's testimony in criminal case. 32 A.L.R.4th 1196.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 A.L.R.4th 310.

Am. Jur.

6 Am. Jur. 2d, Assault and Battery §§ 125- 135.

41 Am. Jur. 2d, Incest §§ 27- 29, 38.

65 Am. Jur. 2d, Rape §§ 40-65.

70C Am. Jur. 2d, Sodomy §§ 25-29.

18 Am. Jur. Trials, pp 342-441, Cross-examination in rape prosecution.

2 Am. Jur. Proof of Facts 2d, pp 365-465, Child abuse – the battered child syndrome.

35 Am. Jur. Proof of Facts 2d, pp 665-690, Qualifying child witness to testify.

CJS.

75 C.J.S., Rape §§ 6-114.

81A C.J.S., Sodomy §§ 6-11.

98 C.J.S., Witnesses §§ 549–624.

Law Reviews.

Recent amendments to the Mississippi Rules of Evidence – the rights of the victim v. the rights of the accused in child abuse prosecutions and dependency or neglect proceedings. 61 Miss. L. J. 367 (Fall 1991).

§ 13-1-407. Use of child's videotaped testimony; protective orders; destruction of videotape.

(1) On motion and hearing in camera and a finding based on information placed on the record which was subject to cross-examination:

(a) That there is a substantial likelihood, based on specific behavioral indicators described in Section 13-1-411 exhibited by the child, that a child who is under the age of sixteen (16) would suffer traumatic emotional or mental distress if he were required to testify in open court; or

(b) That such child is otherwise unavailable; a trial court may order the videotaping of the testimony of the victim or witness in a case in which the occurrence or non-occurrence of sexual abuse or child abuse is a material fact, which videotaped testimony is to be utilized at trial in lieu of testimony in open court.

(2) The motion may be made by:

(a) The child, or the attorney, parent, legal guardian or guardian ad litem of the child;

(b) The trial judge acting at his own discretion; or

(c) Any party to the case.

(3) The judge shall preside, or shall appoint a special master to preside, at the videotaping unless the following conditions are met:

(a) The child is represented by a guardian ad litem or counsel;

(b) The child's representative and the counsel for each party stipulate that the requirement for the presence of the judge or special master may be waived; and

(c) The court finds, after a hearing, that the presence of a judge or special master is not necessary to protect the child.

(4) The defendant and the defendant's counsel shall be present at the videotaping, unless the defendant has waived this right. Provided, however, that on motion of a party, or of the child's representative and hearing in camera and a finding based on information placed on the record which was subject to cross-examination that there is a substantial likelihood, based on specific behavioral indicators exhibited by the child, as described in Section 13-1-411, that the child would suffer traumatic emotional or mental distress if he or she were required to testify in the presence of an adult who is alleged to have abused the child, or to have participated in, or concealed such abuse, the court may require that adult, including without limitation a defendant, to view the testimony from outside the presence of the child by means of a two-way mirror or another similar method that will ensure that the defendant can directly observe and hear the testimony of the child, but that the child cannot hear or see the adult. If the defendant is excluded from the room in which testimony is being taken, the defendant and the attorney for the defendant may communicate by any appropriate private electronic or telephonic method.

(5) All questioning shall be done by attorneys for the prosecution and the defense; however, upon stipulation of all parties, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting concerning the offense to aid the court throughout proceedings conducted under this section.

(6) The motion for the taking of videotaped testimony may be made at any time with three (3) days' written notice of the time and place of the taking of the testimony provided to all parties to the proceeding, to the child and to the child's representative or guardian.

(7) Any videotape which is made pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the child. The court shall order the destruction of a videotape made pursuant to this section after five (5) years have elapsed since the entry of the judgment in the case in which the videotape was made. However, such order may be made before the expiration of five (5) years upon motion filed by the child, his attorney, parent, legal guardian or guardian ad litem after notice to the defendant. In no event shall such a videotape be destroyed before a final judgment has been rendered on an appeal.

(8) The court shall make specific findings of fact, on the record, as to the basis for its rulings under this section.

(9) All parties must be represented by counsel at any taking of any testimony under this section.

HISTORY: Laws, 1986, ch. 345, § 4, eff from and after July 1, 1986.

RESEARCH REFERENCES

ALR.

Requiring complaining witness in prosecution for sex crime to submit to psychiatric examination. 18 A.L.R.3d 1433.

Admissibility of videotape film in evidence in criminal trial. 60 A.L.R.3d 357.

Propriety of allowing absent witness to be examined over closed – circuit television. 80 A.L.R.3d 1212.

Constitutionality of "rape shield" statute restricting evidence of victim's sexual experiences. 1 A.L.R.4th 283.

Instructions to jury as to credibility of child's testimony in criminal case. 32 A.L.R.4th 1196.

Admissibility or use in criminal trial of testimony given at preliminary proceeding by witness not available at trial. 38 A.L.R.4th 378.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 A.L.R.4th 310.

Sufficiency of evidence to establish parent's knowledge or allowance of child's sexual abuse by another under statute permitting termination of parental rights for "allowing" or "knowingly allowing" such abuse to occur. 53 A.L.R.5th 499.

Am. Jur.

6 Am. Jur. 2d, Assault and Battery §§ 125- 135.

41 Am. Jur. 2d, Incest §§ 27- 29, 38.

65 Am. Jur. 2d, Rape §§ 40-65.

70C Am. Jur. 2d, Sodomy §§ 25-29.

2 Am. Jur. Proof of Facts 2d, pp 365-465, Child abuse – the battered child syndrome.

35 Am. Jur. Proof of Facts 2d, pp 665-690, Qualifying child witness to testify.

18 Am. Jur. Trials, pp 342-441, Cross-examination in rape prosecution.

CJS.

75 C.J.S., Rape §§ 61–114.

81A C.J.S., Sodomy §§ 6-11.

98 C.J.S., Witnesses §§ 549–624.

§ 13-1-409. Expert testimony as to meaning of child's testimony; appointment of expert.

(1) If scientific, technical or other specialized knowledge will assist the trier of fact in understanding the testimony of a child under the age of twelve (12) in a case in which the occurrence or non-occurrence of physical or sexual abuse of a child is a material issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify, based on such expertise, in the form of an opinion or otherwise.

(2) The facts or data in the particular case upon which such an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences about the occurrence or non-occurrence of physical or sexual abuse of children, or about children who may be victims or observers of such abuse, the facts or data need not be admissible in evidence.

(3) Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(4) The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless

the judge requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

(5) The court, in a case where the occurrence or non-occurrence of physical or sexual child abuse is a material issue, may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nomination. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(6) In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(7) Nothing in this subsection limits the parties in calling expert witnesses of their own selection.

HISTORY: Laws, 1986, ch. 345, § 5, eff from and after July 1, 1986.

RESEARCH REFERENCES

ALR.

Requiring complaining witness in prosecution for sex crime to submit to psychiatric examination. 18 A.L.R.3d 1433.

Necessity and admissibility of expert testimony as to credibility of witness. 20 A.L.R.3d 684.

Admissibility of expert medical testimony on battered child syndrome. 98 A.L.R.3d 306.

Constitutionality of "rape shield" statute restricting evidence of victim's sexual experiences. 1 A.L.R.4th 283.

Admissibility of testimony regarding spontaneous declarations made by one incompetent to testify at trial. 15 A.L.R.4th 1043.

Appealability of state criminal court order requiring witness other than accused to undergo psychiatric examination. 17 A.L.R.4th 867.

Modern status of rule regarding necessity for corroboration of victim's testimony in prosecution for sexual offense. 31 A.L.R.4th 120.

Instructions to jury as to credibility of child's testimony in criminal case. 32 A.L.R.4th 1196.

Admissibility, at criminal prosecution, of expert testimony on rape trauma syndrome. 42 A.L.R.4th 879.

Constitutionality, with respect to accused's rights to information or confrontation, of statute according confidentiality to sex crime victim's communications to sexual counselor. 43 A.L.R.4th 395.

Admissibility at criminal prosecution of expert testimony on battering parent syndrome. 43 A.L.R.4th 1203.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 A.L.R.4th 310.

Sufficiency of evidence to establish parent's knowledge or allowance of child's sexual abuse by another under statute permitting termination of parental rights for "allowing" or "knowingly allowing" such abuse to occur. 53 A.L.R.5th 499.

When will expert testimony "assist trier of fact" so as to be admissible at federal trial under Rule 702 of Federal Rules of Evidence. 75 A.L.R. Fed. 461.

Am. Jur.

6 Am. Jur. 2d, Assault and Battery §§ 125- 135.

31A Am. Jur. 2d, Expert and Opinion Evidence §§ 116- 140.

41 Am. Jur. 2d, Incest §§ 27- 29, 38.

65 Am. Jur. 2d, Rape §§ 40-65.

70C Am. Jur. 2d, Sodomy §§ 25-29.

10 Am. Jur. Pl & Pr Forms (Rev), Expert and Opinion Evidence, Forms 1 et seq. (appointment of expert witnesses).

2 Am. Jur. Proof of Facts 2d, pp 365-465, Child abuse – the battered child syndrome.

35 Am. Jur. Proof of Facts 2d, pp 665-690, Qualifying child witness to testify.

18 Am. Jur. Trials, pp 342-441, Cross-examination in rape prosecution.

CJS.

32 C.J.S, Evidence §§ 649-651.

75 C.J.S., Rape §§ 61–114.

81A C.J.S., Sodomy §§ 6-11.

Law Reviews.

Posner, Who can speak for our children? Qualification of experts in cases of child sexual abuse. 12 Miss. C. L. Rev. 493, Spring, 1992.

§ 13-1-411. Behavioral indicators used to determine applicability of evidentiary provisions.

The phrase "specific behavioral indicators" when used herein to refer to evidence (regardless of admissibility) that a child has suffered physical or sexual abuse or might suffer traumatic emotional or mental distress if required to testify in court, shall include, by way of illustration and not of limitation, indications of physical or psychological trauma which are (a) well defined, (b) positively correlated or causally linked with the likelihood of traumatic emotional or mental distress on testifying, and (c) rarely, if at all, present in children who have not suffered child abuse, considering the combination or intensity present in the child at issue.

The evidence described in this section shall be provided by competent witnesses, including but not limited to child psychologists, child psychiatrists and other qualified witnesses.

HISTORY: Laws, 1986, ch. 345, § 6, eff from and after July 1, 1986.

Cross References — Relevance of the behavioral indicators described in this section to the admissibility of a child's out-of-court statements, see § 13-1-403.

Relevance of the behavioral factors described in this section to the use of closed circuit television to show a child's testimony, see § 13-1-405.

Relevance of the behavioral factors described in this section to the use of a child's videotaped testimony, see § 13-1-407.

RESEARCH REFERENCES

ALR.

Requiring complaining witness in prosecution for sex crime to submit to psychiatric examination. 18 A.L.R.3d 1433.

Necessity and admissibility of expert testimony as to credibility of witness. 20 A.L.R.3d 684.

Admissibility of expert medical testimony on battered child syndrome. 98 A.L.R.3d 306.

Admissibility of testimony regarding spontaneous declarations made by one incompetent to testify at trial. 15 A.L.R.4th 1043.

Appealability of state criminal court order requiring witness other than accused to undergo psychiatric examination. 17 A.L.R.4th 867.

Instructions to jury as to credibility of child's testimony in criminal case. 32 A.L.R.4th 1196.

Admissibility, at criminal prosecution, of expert testimony on rape trauma syndrome. 42 A.L.R.4th 879.

Constitutionality, with respect to accused's rights to information or confrontation, of statute according confidentiality to sex crime victim's communications to sexual counselor. 43 A.L.R.4th 395.

Admissibility at criminal prosecution of expert testimony on battering parent syndrome. 43 A.L.R.4th 1203.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 A.L.R.4th 310.

Sufficiency of evidence to establish parent's knowledge or allowance of child's sexual abuse by another under statute permitting termination of parental rights for “allowing” or “knowingly allowing” such abuse to occur. 53 A.L.R.5th 499.

Am. Jur.

6 Am. Jur. 2d, Assault and Battery §§ 125- 135.

31A Am. Jur. 2d, Expert and Opinion Evidence §§ 116- 140.

41 Am. Jur. 2d, Incest §§ 27- 29, 38.

65 Am. Jur. 2d, Rape §§ 40-65.

70C Am. Jur. 2d, Sodomy §§ 25-29.

2 Am. Jur. Proof of Facts 2d, pp 365-465, Child abuse – the battered child syndrome.

35 Am. Jur. Proof of Facts 2d, pp 665-690, Qualifying child witness to testify.

25 Am. Jur. Proof of Facts 3d 189, Corroboration of a Child's Sexual Abuse Allegations With Behavioral Evidence.

18 Am. Jur. Trials, pp 342-441, Cross-examination in rape prosecution.

CJS.

32 C.J.S., Evidence §§ 885, 886.

75 C.J.S., Rape 62-101.

81A C.J.S., Sodomy §§ 6-11.

Law Reviews.

Posner, Who can speak for our children? Qualification of experts in cases of child sexual abuse. 12 Miss. C. L. Rev. 493, Spring, 1992.

§ 13-1-413. Court's power to prohibit contact with child not affected by evidentiary provisions.

Sections 13-1-401 through 13-1-415 do not in any way affect any court's power to order any person to refrain from contacting, or being in the presence of, any child.

HISTORY: Laws, 1986, ch. 345, § 7, eff from and after July 1, 1986.

§ 13-1-415. Implementation of evidentiary provisions by rule.

The Mississippi Supreme Court may, by rule, provide procedures to implement Sections 13-1-401 through 13-1-415.

HISTORY: Laws, 1986, ch. 345, § 8, eff from and after July 1, 1986.

CHAPTER 3.

PROCESS, NOTICE, AND PUBLICATION

Sec.
13-3-1. Provisions of chapter applicable to all courts.
13-3-3. Style and date of process.
13-3-5. The summons.
13-3-7 through 13-3-13. Repealed.
13-3-15. Separate or additional summons; attachment against estate of defendant.
13-3-17. Substitution of parties in case of death of party.
13-3-19 through 13-3-23. Repealed.
13-3-25. Summons by publication for unknown heirs and unknown defendants.
13-3-27. Publication of summons.
13-3-29. Repealed.
13-3-31. Publication; requirements and procedures.
13-3-32. Publication—in what newspaper—presumption of continued qualification.
13-3-33 and 13-3-35. Repealed.
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13-3-39. Repealed.
13-3-41. Service on one carrying on business in state by or through trustee or attorney in fact.
13-3-43 through 13-3-47. Repealed.
13-3-49. Service when defendant is a corporation.
13-3-51. Repealed.
13-3-53. Service on one of several executors or administrators.
13-3-55. Suits by or against partnerships; service on one of several partners.
13-3-57. Service on nonresident business not qualified to do business in state; survival of cause of action in case of death or inability to act; service on nonresident executor, administrator, etc.
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13-3-63. Service when defendant is nonresident motorist; appointment of secretary of state as agent.
13-3-65 and 13-3-67. Repealed.
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13-3-75. Return of alias where first writ served.
13-3-77. Process may be executed by an officer out of his county.
13-3-79. Repealed.
13-3-81. When justice court judge may execute process.
13-3-83. Service of notices, summonses, subpoenas, orders, pleadings, motions, etc.
13-3-85. Notice by summons of motions against officers for neglect of duty.
13-3-87. Return of officer may be questioned by parties.
13-3-89. Repealed.
13-3-91. Reversal, on appeal by defendant, for want of service or defective service as an appearance.
13-3-93. Subpoenas for witnesses.
13-3-95 through 13-3-101. Repealed.
13-3-103. Attachment for non-appearing subpoenaed witness.
13-3-105. Subpoenaed witness to attend until discharged; scire facias for defaulters.

Sec.

13-3-107. Settlement of certain civil suits; notice to be given to subpoenaed witnesses and effect of failure to do so.
13-3-109. Issuance of process by supreme court and its return.
13-3-111. Time when executions shall be issued.
13-3-113. Issuance, execution, and return of executions.
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13-3-123. Levy of writs of execution and attachments—on land.
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13-3-173. Sale may be adjourned or continued from day to day.
13-3-175. Venditioni exponas.
13-3-177. Venditioni exponas to issue when officer taking property dies.
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13-3-185. How purchaser takes property sold at execution sale.
13-3-187. Conveyance of land sold under execution or other process.
13-3-189. Completion of title under justice's execution.

§ 13-3-1. Provisions of chapter applicable to all courts.

The law of process as declared in this chapter, except where its provisions are provided for by the Mississippi Rules of Civil Procedure or by the nature of the subject matter, shall govern in all courts.

HISTORY: Codes, 1892, § 3501; 1906, § 3999; Hemingway's 1917, § 3006; 1930, § 3052; 1942, § 1940; Laws, 1991, ch. 573, § 92, eff from and after July 1, 1991.

Cross References — For the rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice of sale sufficient.

1. In general.

This section [Code 1942, § 1940] has no application to newspaper notices given by a board of supervisors to the public that equalized tax rolls are ready for inspection. Miller v. Lucks, 203 Miss. 824, 36 So. 2d 140, 1948 Miss. LEXIS 325 (Miss. 1948).

This section [Code 1942, § 1940] applies only to process in courts proper where property rights are involved and not to the exercise of jurisdiction by the board of supervisors in binding out apprentices. Moore v. Allen, 72 Miss. 273, 16 So. 600, 1894 Miss. LEXIS 105 (Miss. 1894).

2. Notice of sale sufficient.

Although the Internal Revenue Service was correct that the company failed to meet its statutory duty to provide notice of the non-judicial foreclosure sale under 26 U.S.C.S. § 7425(c)(1), there was nothing in the record to suggest that the error was in any way wilful; as for the company's efforts to market the property prior to obtaining it in the sale, there was no dispute that the company strictly followed Mississippi statutory law and published the Notices of Foreclosure Sale for four consecutive weeks pursuant to Miss. Code Ann. § 13-3-1 et seq., and it was not enough for the Internal Revenue Service (IRS) to simply claim that the company acted wilfully with respect to the sales. Moreover, although the IRS demonstrated a mistake, there was no evidence of a wilful act that transgressed equitable standards of conduct; therefore, as a matter of law, the company could rely on the equitable presumption against merger, its liens in the subject properties did not merge with legal title, and it maintained liens superior to the IRS's tax liens as to the subject properties. 2009 U.S. Dist. LEXIS 105390.

RESEARCH REFERENCES

ALR.

Civil liability of judicial officer for malicious prosecution or abuse of process. 64 A.L.R.3d 1251.

§ 13-3-3. Style and date of process.

The style of all process shall be, "The State of Mississippi." It shall not be necessary that any process bear teste in the name of any judge or of any term of the court, but all process, except where otherwise provided, shall be issued and signed by the clerk of the court, with the seal of his office affixed, and shall bear date of the day on which the process shall be issued.

HISTORY: Codes, Hutchinson's 1848, ch. 58, art. 1 (20); 1857, ch. 61, art. 60, ch. 62, art. 26; 1871, §§ 689, 1002; 1880, § 2284; 1892, § 3413; 1906, § 3912; Hemingway's 1917, § 2919; 1930, § 2964; 1942, § 1844.

Cross References — Constitution provision for style of process, see Miss. Const. Art. 6, § 169.

Criminal offense of resisting authorized person attempting to serve process, see § 97-9-75.

Criminal offense of forgery of process, see § 97-21-35.

Process for arrest on an indictment against a natural person, see § 99-9-1.

Issuance of process when an indictment is found against corporation, see § 99-9-3.

For the rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Formal requisites.
3. Issuance of process.

1. In general.

This section [Code 1942, § 1844] has no application to newspaper notices given by a board of supervisors to the public that equalized tax rolls are ready for inspection. Miller v. Lucks, 203 Miss. 824, 36 So. 2d 140, 1948 Miss. LEXIS 325 (Miss. 1948).

The term "process," within the meaning of the section [Code 1942, § 1844], stipulating that all process, except where otherwise provided, shall be issued and signed by the clerk of the court, includes the ordinary warrant for arrest, and certainly so when taken in connection with the section opening with the sentence that "the process for arrest on an indictment shall be a capias," etc. Cooper v. State, 193 Miss. 672, 10 So. 2d 764, 1942 Miss. LEXIS 156 (Miss. 1942).

This section [Code 1942, § 1844] was not applicable to require a seal of the court to be affixed to a printed notice to taxpayers of validation proceedings in connection with the issuance of bonds for the construction or purchase of a municipal electric plant, since the process referred to in this section [Code 1942, § 1844] is not a newspaper notice to taxpayers such as is required under Code of 1930, § 313 (Code 1942, § 4314). Mississippi Power & Light Co. v. Batesville, 187 Miss. 737, 193 So. 814, 1940 Miss. LEXIS 247 (Miss. 1940).

This section [Code 1942, § 1844] does not require a seal to be affixed to notices by the board of supervisors to taxpayers of tax assessments, since the statute requiring the seal to be upon process refers to process addressed to individuals and not publication of a general notice by a board of supervisors to the public or a part thereof not specifically named, the object of the statute as to seal being to advise the party upon whom the writ is to be served that its authenticity is genuine. Mullins v. Lyle, 183 Miss. 297, 183 So. 696, 1938 Miss. LEXIS 243 (Miss. 1938).

This statute has no application to process issued by justice of the peace, the justice of the peace not being required or authorized to have a seal. Matthews v. State, 134 Miss. 807, 100 So. 18, 1924 Miss. LEXIS 327 (Miss. 1924).

This section [Code 1942, § 1844] is not applicable to notices in disbarment proceedings. Ex parte Cashin, 128 Miss. 224, 90 So. 850, 1922 Miss. LEXIS 109 (Miss. 1922).

In a disbarment proceeding reasonable notice so as to prevent injustice is all that is required. Ex parte Cashin, 128 Miss. 224, 90 So. 850, 1922 Miss. LEXIS 109 (Miss. 1922).

2. Formal requisites.

A writ of garnishment is not rendered ineffective by an erroneous recital that judgment had been rendered in county court when in fact it was in circuit court, where it was issued under the signature of the clerk of the circuit court, bore its seal, was for an amount in excess of county court's jurisdiction, and was returnable on a date when the circuit court term, and not that of the county court, would begin. Mid-South Pipeline Contractors, Inc. v. Citizens Nat'l Bank, 239 Miss. 621, 124 So. 2d 697, 1960 Miss. LEXIS 331 (Miss. 1960).

Sealing of a writ of execution is requisite to its validity. W. T. Rawleigh Co. v. Howell, 196 Miss. 489, 18 So. 2d 134, 1944 Miss. LEXIS 218 (Miss. 1944).

Location of seal is not important in effecting authentication. W. T. Rawleigh Co. v. Howell, 196 Miss. 489, 18 So. 2d 134, 1944 Miss. LEXIS 218 (Miss. 1944).

Mere fact that the seal had been placed upon a writ of execution elsewhere than upon the face of the writ proper, such as upon the unprinted margin or upon that part of the document utilized to detail accrued costs, does not render it invalid. W. T. Rawleigh Co. v. Howell, 196 Miss. 489, 18 So. 2d 134, 1944 Miss. LEXIS 218 (Miss. 1944).

Affixing clerk's seal to writ of execution, consisting of printed form upon single sheet, the right half of which contained the writ proper and the left half an itemized cost bill, at the lower lefthand corner of the part containing the cost bill instead of upon that part of the writ proper, sufficiently satisfied this section [Code 1942, § 1844].W. W. T. Rawleigh Co. v. Howell, 196 Miss. 489, 18 So. 2d 134, 1944 Miss. LEXIS 218 (Miss. 1944).

Although the original subpoena has no seal, after thirty years, in a collateral attack, the law presumes the execution of a proper subpoena. McAllum v. Spinks, 129 Miss. 237, 91 So. 694, 1922 Miss. LEXIS 13 (Miss. 1922).

All process of the court should bear a seal or should show there is no seal or it will be bad. Burton v. Cramer, 123 Miss. 848, 86 So. 578, 1920 Miss. LEXIS 87 (Miss. 1920); McAllum v. Spinks, 129 Miss. 237, 91 So. 694, 1922 Miss. LEXIS 13 (Miss. 1922).

Process without the seal of the court, or if there be no seal without a statement of that fact, is bad. Pharis v. Conner, 11 Miss. 87, 1844 Miss. LEXIS 48 (Miss. 1844).

3. Issuance of process.

The fact that a capias for arrest on a misdemeanor charge was issued on the affidavit of the county prosecuting attorney, by the clerk of the county court without any order therefor from the county judge did not render it invalid, or avoid jurisdiction, by the court over the person of the defendant, since, inasmuch as the affidavit of the county prosecuting attorney took the place of an indictment in the circuit court, the process on the charge of misdemeanor so made was a capias to be issued by the clerk of the county court. Cooper v. State, 193 Miss. 672, 10 So. 2d 764, 1942 Miss. LEXIS 156 (Miss. 1942).

This section [Code 1942, § 1844], while it applies to the clerks of all courts, applies only as to process issuing out of the courts of which they are clerks, and vests no authority in a clerk of the circuit court to issue a warrant for the arrest of a person charged with the commission of a crime by an affidavit lodged with him. Martin v. State, 190 Miss. 32, 199 So. 98, 1940 Miss. LEXIS 188 (Miss. 1940).

If the process be issued by another, with the clerk's consent in his name, it is sufficient. Barry v. Gamble, 44 U.S. 32, 11 L. Ed. 479, 1845 U.S. LEXIS 417 (U.S. 1845).

RESEARCH REFERENCES

ALR.

Omission of signature of issuing officer on civil process or summons as affecting jurisdiction of the person. 37 A.L.R.2d 928.

Am. Jur.

62 Am. Jur. 2d (Rev), Process §§ 60, 61 et seq.

CJS.

72 C.J.S., Process §§ 22, 23 et seq.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Rules 4, 5, 7-11, and 15. 52 Miss. L. J. 3, March 1982.

§ 13-3-5. The summons.

(1) The process to bring in defendants in all civil actions in all courts except justice court shall be a summons, the form, issuance, service, waiver, return, amendment and time limits of which shall be governed by the Mississippi Rules of Civil Procedure.

(2) The process to bring in defendants in all civil actions in justice court shall be a summons which shall be served in one of the following modes:

First. — Upon the defendant personally, if to be found in the county, by handing him a true copy of the process.

Second. — If the defendant cannot himself be found in the county, then by leaving a true copy of the process at his usual place of abode, with his wife or some other person of his family above the age of sixteen (16) years, and willing to receive such copy.

Third. — If the defendant cannot himself be found, and if no person of his family aged sixteen (16) years can be found at his usual place of abode who is willing to receive such copy, then by posting a true copy on a door of the defendant's usual place of abode; provided, however, that if this mode is used when the defendant's usual place of abode is a multi-family dwelling, a copy of the summons shall be mailed to the defendant by the clerk of the court upon return of service.

HISTORY: Codes, 1871, §§ 693, 1001; 1880, §§ 1523, 1848; 1892, § 3414; 1906, § 3913; Hemingway's 1917, § 2920; 1930, § 2965; 1942, § 1845; Laws, 1991, ch. 573, § 93; Laws, 1992, ch. 427 § 1, eff from and after passage (approved May 4, 1992).

Cross References — Power of chancery court to issue summons, see § 9-5-85.

Notification and request for interpreter for deaf person following receipt of notice for appearance, see § 13-1-305.

Subpoena of witnesses generally, see § 13-3-93.

For the rule governing service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

Service of summons, see Uniform Rule of Procedure for Justice Court 2.04.

JUDICIAL DECISIONS

1. In general.

A writ of garnishment is not rendered ineffective by an erroneous recital that judgment had been rendered in county court when in fact it was in circuit court, where it was issued under the signature of the clerk of the circuit court, bore its seal, was for an amount in excess of the county court's jurisdiction, and was returnable on a date when the circuit court term and not that of the county court would begin. Mid-South Pipeline Contractors, Inc. v. Citizens Nat'l Bank, 239 Miss. 621, 124 So. 2d 697, 1960 Miss. LEXIS 331 (Miss. 1960).

The requisites of a summons in chancery should be complied with in order to authorize a pro confesso. Gulf & S. I. R. Co. v. F. L. Riley Mercantile Co., 139 Miss. 158, 104 So. 81, 1925 Miss. LEXIS 136 (Miss.), writ of error dismissed, 269 U.S. 597, 46 S. Ct. 120, 70 L. Ed. 432, 1925 U.S. LEXIS 293 (U.S. 1925).

A judgment by default, while not void, is erroneous where the return-day named in the summons is prior to the date of service of summons. T. A. Howard Lumber Co. v. Hopson, 136 Miss. 237, 101 So. 363, 1924 Miss. LEXIS 121 (Miss. 1924).

A case where a bank is bound by service of summons although the summons was intended for a bank of like name which was defunct. Campbell & Campbell v. Pickens Bank, 134 Miss. 559, 99 So. 378, 1924 Miss. LEXIS 305 (Miss. 1924).

There must be a valid service of process, an appearance of defendant or a waiver of process before there can be a valid judgment. Boutwell v. Grayson, 118 Miss. 80, 79 So. 61, 1918 Miss. LEXIS 54 (Miss. 1918), overruled, Bank of Philadelphia v. Posey, 130 Miss. 530, 92 So. 840, 1922 Miss. LEXIS 176 (Miss. 1922).

The writ should show in proper case that partition as well as injunction was sought. Field v. Junkin, 99 Miss. 834, 56 So. 172, 1911 Miss. LEXIS 258 (Miss. 1911).

The failure of a writ to apprise the defendant of the nature of the suit does not render it void. Guess v. Smith, 100 Miss. 457, 56 So. 166, 1911 Miss. LEXIS 5 (Miss. 1911).

The service of an injunction writ under a bill to restrain the commission of trespasses and demanding damages and the statutory penalty for cutting trees is not a summons and does not authorize a decree pro confesso. Sheffield v. Friedberg, 84 Miss. 188, 36 So. 242, 1904 Miss. LEXIS 22 (Miss. 1904).

OPINIONS OF THE ATTORNEY GENERAL

A sheriff may hire an individual to serve process on a fee basis. McWilliams, Nov. 14, 1997, A.G. Op. #97-0711.

A summons for a replevin hearing wherein the property is not immediately seized may be served by placing a true copy on the door of the defendant's usual place of abode. Parker, May 3, 2002, A.G. Op. #02-0225.

A constable may serve a summons for a replevin by any of the means set forth in Section 13-3-5; if the constable is unable to determine whether or not the defendant is in possession of the property described in the declaration, he should note such on the return. Enlow, Nov. 15, 2002, A.G. Op. #02-0646.

If a constable posts process on the door of a home as allowed by this section and the process is later returned to the court with credible information that the defendant does not live at that address, then the constable is not entitled to a fee for service of process. Davis, Mar. 5, 2004, A.G. Op. 04-0093.

There is no statutory provision allowing for private process servers within the State of Mississippi other than the emergency situation. Process in criminal matters must be served by a constable or sheriff or sheriff's deputy. Subpoenas may be served by private process servers. Huckaby, Aug. 25, 2006, A.G. Op. 06-0378.

RESEARCH REFERENCES

ALR.

Validity of service of summons or complaint on Sunday or holiday. 63 A.L.R.3d 423.

Am. Jur.

62 Am. Jur. 2d, Process §§ 8, 9.

Complaint, petition, or declaration against sheriff for failure to serve summons, 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 31.

Summons, 20 Am. Jur. Pl & Pr Forms (Rev), Process, Forms 12-14.

Summonses, 16 Am. Jur. Pl & Pr Forms, Process, Forms 16:208-16:214.

Complaint against sheriff for failure to serve summons, 18 Am. Jur. Pl & Pr Forms, Sheriffs, Police, and Constables, Form 18:556.

CJS.

72 C.J.S., Process §§ 6-11.

§§ 13-3-7 through 13-3-13.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-3-7. [Codes, 1857, ch. 62, art. 29; 1871, § 1008; 1880, § 1853; 1892, § 3415; 1906, § 3914; Hemingway's 1917, § 2921; 1930, § 2966; 1942, § 1846]

§ 13-3-9. [Codes, Hutchinson's 1848, ch. 58, art. 1 (24); 1857, ch. 61, art. 66; 1871, § 697; 1880, § 1524; 1892, § 3416; 1906, § 3915; Hemingway's 1917, § 2922; 1930, § 2967; 1942, § 1847]

§ 13-3-11. [Codes, Hutchinson's 1848, ch. 58, art. 1 (20); 1857, ch. 61, art. 62; 1871, § 695; 1880, § 1525; 1892, § 3417; 1906, § 3916; Hemingway's 1917, § 2923; 1930, § 2968; 1942, § 1848]

§ 13-3-13. [Codes, 1857, ch. 62, art. 26; 1871, § 1005; 1880, § 1848; 1892, § 3418; 1906, § 3917; Hemingway's 1917, § 2924; 1930, § 2969; 1942, § 1849: Laws, 1924, ch. 151]

Editor's Notes — Former § 13-3-7 provided that the names of all defendants who reside in the county where the process issues shall be included in the same summons.

Former § 13-3-9 provided that if any of the defendants reside in different counties from that in which the suit is brought, original process may issue at the same time to each county in which any of the defendants reside, and the clerk shall indorse on each writ issued to another county than that in which the suit is brought the names of the defendants upon whom it is to be served, and that it is a duplicate of a writ issued to the other county for the same cause of action and the sheriff shall execute and return such process as in other cases, and under the same penalties.

Former § 13-3-11 provided for when the summons, in actions in circuit court, shall be made returnable and when it shall be executed.

Former § 13-3-13 specified when the summons was returnable and when it was to be executed in suits in chancery.

§ 13-3-15. Separate or additional summons; attachment against estate of defendant.

Upon the request of the plaintiff, separate or additional summons shall issue against any defendants. When the defendant shall not be found, the plaintiff may have an attachment against the estate of the defendant. If, upon such attachment, the sheriff shall seize or attach any property of the defendant, the same proceedings shall thereafter be had as if the suit had been originally commenced by attachment.

HISTORY: Codes, Hutchinson's 1848, ch. 58, art. 1 (40); 1857, ch. 61, art. 67; 1871, § 718; 1880, §§ 1534, 1851; 1892, § 3419; 1906, § 3918; Hemingway's 1917, § 2925; 1930, § 2970; 1942, § 1850; Laws, 1991, ch. 573, § 94, eff from and after July 1, 1991.

Cross References — Issuance of duplicate and alias writs by an officer granting an attachment, see § 11-33-21.

Return of alias where first process has been executed, see § 13-3-75.

Issuance of an alias where a capias has been returned unexecuted, see § 99-9-1.

For the rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

1. In general.

When an action has been begun in accordance with the law of venue in personal actions and the defendant shall not be found, the plaintiff may have an attachment under this section [Code 1942, § 1850], but the record must properly show that the action was rightfully commenced, and that defendant cannot be "found" in the county. McNair v. Kaiser, 62 Miss. 783, 1885 Miss. LEXIS 147 (Miss. 1885).

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d, Executions §§ 120- 124.

62 Am. Jur. 2d (Rev), Process §§ 97, 133- 139, 140, 147, 148, 159170 et seq.

Alias summons, 16 Am. Jur. Pl & Pr Forms, Process, Form 16:223.

CJS.

33 C.J.S., Executions §§ 119-130.

72 C.J.S., Process § 37.

§ 13-3-17. Substitution of parties in case of death of party.

Substitution of parties in case of death of a party shall be governed by the Mississippi Rules of Civil Procedure.

HISTORY: [Codes, 1857, ch. 62, art. 32; 1871, § 1072; 1880, § 1852; 1892, § 3420; 1906, § 3919; Hemingway's 1917, § 2926; 1930, § 2971; 1942, § 1851.]; Laws, 1991, ch. 573, § 95, eff from and after July 1, 1991.

Cross References — For the rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

1. In general.

An amended bill or bill of revivor in chancery is not required under this statute [Code 1942, § 1851]. Mitchell v. Conner, 42 Miss. 550, 1869 Miss. LEXIS 30 (Miss. 1869).

RESEARCH REFERENCES

Am. Jur.

62B Am. Jur. 2d (Rev), Process § 125.

§§ 13-3-19 through 13-3-23. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-3-19. [Codes, 1857, ch. 62, art. 34; 1871, § 1013; 1880, § 1855; 1892, § 3421; 1906, § 3920; Hemingway's 1917, § 2927; 1930, § 2972; 1942, § 1852; Laws, 1924, ch. 151; Laws, 1946, ch. 170]

§ 13-3-21. [Codes, 1857, ch. 62, art. 34; 1871, § 1013; 1880, § 1856; 1892, § 3422; 1906, § 3921; Hemingway's 1917, § 2928; 1930, § 2973; 1942, § 1853]

§ 13-3-23. [Codes 1880, § 1857; 1892, § 3423; 1906, § 3922; Hemingway's 1917, § 2929; 1930, § 2974; 1942, § 1854]

Editor's Notes — Former § 13-3-19 provided for service of summons by publication for nonresident or absent defendant.

Former § 13-3-21 specified the duties of clerk when service of summons was by publication.

Former § 13-3-23 provided that publication could be dispensed with if summons served on the absent party.

§ 13-3-25. Summons by publication for unknown heirs and unknown defendants.

When unknown heirs are made parties defendant in any proceeding in the chancery court, upon affidavit that the names of such heirs are unknown, the complainant may have publication of summons for them and such proceedings shall be had thereupon in all respects as are authorized in the case of a nonresident defendant. When the parties in interest are unknown, and affidavit of that fact be filed, they may be made parties by publication to them as unknown parties in interest.

HISTORY: Codes, 1857, ch. 62, art. 35; 1871, § 1069; 1880, § 1858; 1892, § 3424; 1906, § 3923; Hemingway's 1917, § 2930; 1930, § 2975; 1942, § 1855.

Cross References — Summons by publication of the heirs of an intestate deceased in an action brought by those praying to be declared heirs of the deceased, see § 91-1-29.

Amendment of an indictment where the name of an unknown defendant later becomes known, see § 99-7-25.

Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

RESEARCH REFERENCES

Am. Jur.

62B Am. Jur. 2d (Rev), Process § 168.

20 Am. Jur. Pl & Pr Forms (Rev), Process, Forms 162-164, 181, 182, 191-193, 201 (affidavit in support of motion for service of process by publication).

16 Am. Jur. Pl & Pr Forms, Process, Forms 16:325-16:341 (affidavit for publication of summons).

CJS.

72 C.J.S., Process §§ 118–120.

§ 13-3-27. Publication of summons.

Publication of summons in all cases and in every court, when authorized by law, shall be made as prescribed in the Mississippi Rules of Civil Procedure.

HISTORY: Codes, 1892, § 3425; 1906, § 3924; Hemingway's 1917, § 2931; 1930, § 2976; 1942, § 1856; Laws, 1991, ch. 573, § 96, eff from and after July 1, 1991.

Cross References — For the rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

1. In general.

A judgment in personam cannot be rendered against a foreign corporation on publication of process. Columbia Star Milling Co. v. Brand, 115 Miss. 625, 76 So. 557, 1917 Miss. LEXIS 241 (Miss. 1917).

RESEARCH REFERENCES

Am. Jur.

62 Am. Jur. 2d (Rev), Process §§ 197-198, 135, 140 et seq.

62 Am. Jur. 2d (Rev), Process §§ 206 et seq.

Affidavit in support of motion for service of process by publication, 20 Am. Jur. Pl & Pr Forms (Rev), Process, Forms 162-164, 181, 182, 191-193, 201, 282.

Affidavit for publication of summons, 16 Am. Jur. Pl & Pr Forms, Process, Forms 16:325-16:341.

CJS.

72 C.J.S., Process §§ 117 et seq.

§ 13-3-29. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1880, § 462; 1892, § 3426; 1906, § 3925; Hemingway's 1917, § 2932; 1930, § 2977; 1942, § 1857]

Editor's Notes — Former § 13-3-29 provided for posting as a substitute for service by publication.

§ 13-3-31. Publication; requirements and procedures.

(1) Whenever it is required by law that any summons, order, citation, advertisement or other legal notice shall be published in a newspaper in this state, it shall mean, in addition to any other requirements imposed by law, publication in some newspaper which:

(a) Maintains a general circulation predominantly to bona fide paying subscribers within the political subdivision within which publication of such legal notice is required. The term "general circulation" means numerically substantial, geographically widespread, demographically diversified circulation to bona fide paying subscribers. In no event shall the term "general circulation" be interpreted to require that legal notices be published in a newspaper having the greatest circulation. The term "bona fide paying subscribers" means persons who have subscribed at a subscription rate which is not nominal, whether by mail subscriptions, purchases through dealers and carriers, street vendors and counter sellers, or any combination thereof, but shall not include free circulation, sales at a token or nominal subscription price and sales in bulk for purposes other than for resale for individual subscribers.

(b) Maintains a legitimate list of its bona fide paying subscribers by the following categories where applicable:

(i) Mail subscribers;

(ii) Dealers and carriers; and

(iii) Street vendors and counter sellers.

(c) Is not published primarily for advertising purposes and has not contained more than seventy-five percent (75%) advertising in more than one-half (½) of its issues during the period of twelve (12) months next prior to the first publication of any legal notice therein, excluding separate advertising supplements inserted into but separately identifiable from any regular issue or issues.

(d) Has been established and published continuously for at least twelve (12) months next prior to the first publication of such matter to be published, is regularly issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively; provided, however, that publication on legal holidays of this state or of the United States and on Saturdays and Sundays shall not be required, and failure to publish not more than two (2) regular issues in any calendar year shall not disqualify a paper otherwise qualified.

(e) Is issued from a known office of publication, which shall be the principal public business office of the newspaper and need not be the place at which the newspaper's printing presses are physically located. A newspaper shall be deemed to be "published" at the place where its known office of publication is located.

(f) Is formed of printed sheets. However, the word "printed" does not include reproduction by the stencil, mimeograph or hectograph process.

(g) Is originated and published for the dissemination of current news and intelligence of varied, broad and general public interest, announcements and notices, opinions as editorials on a regular or irregular basis, and advertising and miscellaneous reading matter.

(h) Is not designed primarily for free circulation or for circulation at nominal rates.

(2) "Newspaper," as used in this section, shall not include a newspaper, publication, or periodical which is published, sponsored by, is directly supported financially by, or is published to further the interests of, or is directed to, or has a circulation restricted in whole or in part to any particular sect, denomination, labor or fraternal organization or other special group or class of citizens, or which primarily contains information of a specialized nature rather than information of varied, broad and general interest to the general public, or which is directed to any particular geographical portion of any given political subdivision within which publication of such legal notice is required, rather than to such political subdivision as a whole. No newspaper otherwise qualified under this section shall be disqualified from publishing legal notices for the sole reason that such newspaper does not have as great a circulation as some other newspaper publishing in the same political subdivision.

(3) In the event of the discontinuance of the publication of all newspapers in any county qualified under this section to publish legal notices, any other such newspaper published in the same county, regardless of the length of time it has been published, shall be deemed qualified to publish such legal notices, provided such newspaper meets all requirements of this section other than the requirements of subsection (1) (d) of this section.

(4) A newspaper otherwise qualified under this section which is published in a municipality whose corporate limits encompass territory in more than one (1) county shall be qualified to publish legal notices, including foreclosure sale notices as described in Section 89-1-55, for any county a portion of whose territory is included within the municipality, irrespective of the actual physical location within the municipality of the principal public business office of the newspaper.

HISTORY: Codes, 1942, § 1858; Laws, 1936, ch. 313; Laws, 1948, ch. 427; Laws, 1976, ch. 479, § 1; Laws, 1984, ch. 400; Laws, 2004, ch. 453, § 1, eff from and after passage (approved Apr. 28, 2004).

Editor's Notes — The preamble to Chapter 479 of the Laws of 1976 reads as follows:

"Whereas, it is in the public interest of the people of this state to assure that legal notices required by law to be published in a newspaper in this state are published in newspapers having numerically substantial, extensive and widespread circulation to bona fide paying subscribers, to the end that effective general notice to the public is given by such publication; now, therefore,

Be it enacted by the legislature of the State of Mississippi:"

Cross References — Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. General circulation requirement.

1. In general.

City Board of Aldermen (Board) never concluded that the publisher was unqualified, and to the contrary, the Board expressly stated in its motion that no determination could be made whether the publisher was qualified or in compliance with Miss. Code Ann. § 13-3-31 since it did not receive any circulation information; the circuit court properly held that the determining issue in this case, however, was not that of circulation figures, but it was instead the lower bid submitted by the newspaper. Stone County Publ., Inc. v. Prout, 18 So. 3d 300, 2009 Miss. App. LEXIS 341 (Miss. Ct. App. 2009).

Judgment determining that appellee's publication was a newspaper qualified to publish legal notices in DeSoto County within the meaning of Miss. Code Ann. § 13-3-31 was affirmed, where appellee presented sufficient evidence to sustain the trial court's finding that the publication's principal public business office was in DeSoto County. The publication had more than 20 employees in Southaven, a city in De Soto County, including a general manager, editor, advertising staff, advertising manager, advertising sales staff, a deputy editor, several reporters, clerical staff, and circulation staff consisting of a district manager and one or two field representatives. DeSoto Times Today v. Memphis Publ. Co., 991 So. 2d 609, 2008 Miss. LEXIS 455 (Miss. 2008).

State supreme court reversed the denial of a summary judgment motion filed by bank and trustee as the city where the newspaper was published encompassed two different counties and thus, the newspaper was deemed to be published in both counties under Miss. Code Ann. § 13-3-31(4) for purposes of the publication of foreclosure sale notices. Warren v. Johnston, 908 So. 2d 744, 2005 Miss. LEXIS 488 (Miss. 2005).

Trial court misapplied Miss. Code Ann. § 13-3-31 in finding that the successful bidder's newspaper section was not adequate under § 13-3-31 for the publication of legal notices, because it was not published every day, it was not identified by letter like other sections, and it contained different information depending upon its destination; § 13-3-31 did not determine when a section of the newspaper was treated as a separate and independent newspaper, and instead it simply defined a newspaper and provided the criteria that a newspaper had to satisfy in order to publish legal notices. Gannett River States Publ'g Corp. v. Jackson Advocate, 856 So. 2d 247, 2003 Miss. LEXIS 350 (Miss. 2003).

City council did not err in finding that the successful bidder satisfied the requirements under Miss. Code Ann. § 13-3-31 when it determined that the successful bidder's proposal to publish the legal notices in a section of its newspaper that was published once a week was a qualified bid; the section of the paper at issue was sold with the newspaper, it was a section of the paper despite not being identified by letter like the other sections, and it did not matter that the section was only included in papers sold in the city, as notices only had to be published there. Gannett River States Publ'g Corp. v. Jackson Advocate, 856 So. 2d 247, 2003 Miss. LEXIS 350 (Miss. 2003).

Whether the publication of notice to creditors required by § 91-7-145 is made in an appropriate newspaper brings into bearing § 13-3-31, which sets forth the requirements a newspaper must meet in order to qualify as a valid publisher of legal notices. Estate of Myers v. Myers, 498 So. 2d 376, 1986 Miss. LEXIS 2844 (Miss. 1986).

Contention that notice to creditors was not published in a newspaper which qualified as a valid publisher of legal notices, which was not raised in the court below, would not be considered by the Supreme Court on appeal. Estate of Myers v. Myers, 498 So. 2d 376, 1986 Miss. LEXIS 2844 (Miss. 1986).

Municipal authorities cannot let a contract to publish legal notices to a newspaper not qualified under § 13-3-31, regardless of whether or not it is the lowest bidder; thus a city council's order dividing the publication of its legal notices equally among three newspapers was null and void where it was subsequently determined that one of the newspapers was not legally qualified; a subsequent order of the council awarding the contract to the other two newspapers was not arbitrary, capricious, discriminatory, illegal or without substantial basis and the circuit court thus erred in setting it aside. City of Jackson v. Capital Reporter Publishing Co., 373 So. 2d 802, 1979 Miss. LEXIS 2300 (Miss. 1979).

Object of statute is to avoid publication of important notices in newspapers so recently established as not to assure general notice to the public. Elliott v. Board of Sup'rs, 182 Miss. 631, 179 So. 344, 180 So. 72, 1938 Miss. LEXIS 132 (Miss. 1938).

Order of supervisors excluding beer and wine pursuant to popular vote held not invalid for failure to recite that newspaper in which notice of election published had been in existence for more than one year prior to publication, since such recital is not a jurisdictional requirement. Elliott v. Board of Sup'rs, 182 Miss. 631, 179 So. 344, 180 So. 72, 1938 Miss. LEXIS 132 (Miss. 1938).

Proof of publication of notice of election, held not invalid because of failure to recite newspaper had been established for twelve months prior to first publication, in view of exception as to discontinuance of any newspaper in county qualified to publish legal notices. Elliott v. Board of Sup'rs, 182 Miss. 631, 179 So. 344, 180 So. 72, 1938 Miss. LEXIS 132 (Miss. 1938).

2. General circulation requirement.

The statute does not require that a newspaper break down its subscription base by zip code in order to demonstrate that it is a newspaper of general circulation. Sunland Publ. Co. v. City of Jackson, 710 So. 2d 879, 1998 Miss. LEXIS 138 (Miss. 1998).

Although a newspaper may be directed towards one particular area, locality or group within a relevant area, as long as that newspaper publishes news, human interest, advice columns, sports, arts, etc., which are of interest to the general public, its distribution is not entirely limited to one geographic area, is available to anyone who wishes to subscribe, and there exists paid subscribers, the newspaper is one of general circulation. Sunland Publ. Co. v. City of Jackson, 710 So. 2d 879, 1998 Miss. LEXIS 138 (Miss. 1998).

A finding that three members of the city council had not personally seen a particular newspaper in their neighborhoods was insufficient to support a determination that the newspaper did not meet the general circulation requirement. Sunland Publ. Co. v. City of Jackson, 710 So. 2d 879, 1998 Miss. LEXIS 138 (Miss. 1998).

OPINIONS OF THE ATTORNEY GENERAL

All qualifications of statute are equally important and newspaper must meet all qualifications to be qualified to publish legal notices. Haque, May 22, 1990, A.G. Op. #90-0336.

A newspaper with a principal public business office in a county in Mississippi is deemed to be published in Mississippi regardless of the fact it can be purchased only as part of a Tennessee newspaper. Chamberlin, Feb. 19, 2002, A.G. Op. #02-0033.

The fact that a subscription to a subsidiary Mississippi newspaper cannot be effected without a subscription to the Tennessee newspaper is immaterial to whether the Mississippi newspaper under the statute; similarly, the fact that the purchase price of a newspaper and the purchase price of the subsidiary Mississippi newspaper are part of a single price package is also immaterial. Chamberlin, Feb. 19, 2002, A.G. Op. #02-0033.

If a school district has either made a finding of fact that its current publisher is qualified under this section or has not made a finding of fact that it fails to meet the requirements and provisions of this section, there is no statutory requirement that the school district respond to a request by another newspaper to be designated as the official newspaper of the school district for legal notices. Wallace, January 15, 1999, A.G. Op. #98-0804.

As between qualified newspapers, a newspaper with a known office of publication within the municipality must be selected to publish the legal notices of that municipality. Edens, July 23, 1999, A.G. Op. #99-0289.

The qualifications of the statute are equally important, and a newspaper must meet all the qualifications to publish legal notices. Dickerson, Dec. 3, 1999, A.G. Op. #99-0630.

Notice must be published in a newspaper that is numbered consecutively. Chamberlin, Dec. 13, 2002, A.G. Op. #02-0678.

If a newspaper was established and continued uninterrupted publication for twelve or more months and is now numbered consecutively, the fact that it was not numbered consecutively during the entire twelve or more months would not be material. Chamberlin, Dec. 13, 2002, A.G. Op. #02-0678.

The best definition of the phrase "numbered consecutively" is found in its common usage: a series of items or events which are numbered beginning with the number one and continuing in unbroken, numerical sequence. Chamberlin, Dec. 13, 2002, A.G. Op. #02-0678.

Municipal governing authorities may require newspapers submitting bids for the municipality's publishing contract to provide evidence of compliance with Section 13-3-31. Taylor, Oct. 27, 2006, A.G. Op. 06-0530.

RESEARCH REFERENCES

ALR.

Sufficiency of affidavit as to due diligence in attempting to learn whereabouts of party to litigation, for the purpose of obtaining service by publication. 21 A.L.R.2d 929.

Difference between date of affidavit for service by publication and date of filing or of order for publication as affecting validity of service. 46 A.L.R.2d 1364.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am. Jur.

62 Am. Jur. 2d (Rev), Process § 217.

CJS.

72 C.J.S., Process § 125.

Law Reviews.

Abbott, Some Basic Priority Problems

in a Land Development Project in Mississippi with Emphasis Upon Power of Sale Foreclosure Procedures. 50 Miss. L. J. 665, September 1979.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss. L.J. 49, March, 1985.

§ 13-3-32. Publication—in what newspaper—presumption of continued qualification.

All newspapers which were qualified to publish legal notices and which were publishing legal notices prior to July 1, 1976, shall be presumed to qualify under Section 13-3-31 unless and until a determination has been made by competent authority that such newspaper fails to meet the requirements and provisions of Section 13-3-31.

HISTORY: Laws, 1976, ch. 479, § 2, eff from and after July 1, 1976.

Cross References — Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

OPINIONS OF THE ATTORNEY GENERAL

If, as a matter of fact, a newspaper was not qualified pursuant to this section to publish legal notices and publishing legal notices prior to July 1, 1976, then no presumption of validity of legal notices published therein could attach thereto. Wallace, January 15, 1999, A.G. Op. #98-0804.

§§ 13-3-33 and 13-3-35. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-3-33. [Codes, Hutchinson's 1848, ch. 58, art. 1 (44); 1857, ch. 61, art. 64; 1871, § 701; 1880, § 1527; 1892, § 3427; 1906, § 3926; Hemingway's 1917, § 2933; 1930, § 2978; 1942, § 1859]

§ 13-3-35. [Codes, 1892, § 3428; 1906, § 3927; Hemingway's 1917, § 2934; 1930, § 2980; 1942, § 1861]

Editor's Notes — Former § 13-3-33 specified how a summons was to be executed. Former § 13-3-35 provided form for the sheriff's return on original process.

§ 13-3-37. Sheriff to mark and return process.

The sheriff shall mark on all process the day of the receipt thereof by him, and he shall return the same promptly and in any event within the time during which the person served must respond to the process, with a written statement of his proceedings thereon, and of his fees, for serving it. For failing to note the time of the receipt of process, or for failing to return the same, the sheriff shall forfeit to the party aggrieved the sum of One Hundred Dollars ($100.00), and shall be liable for all damages, and the court may enforce return of the process by fine and imprisonment for contempt. Whenever a sheriff of any county shall receive from another county any writ or other process directed to him, he shall not be liable for a failure to return the same to the county from which the same was issued if he shall show to the court that he mailed the same in the post office, directed to the clerk of the court by whom the same was issued, at least two (2) days before the sitting of the court to which the same was returnable.

HISTORY: Codes, 1857, ch. 61, art. 63; 1871, § 700; 1880, § 1526; 1892, § 3429; 1906, § 3928; Hemingway's 1917, § 2935; 1930, § 2981; 1942, § 1862; Laws, 1991, ch. 573, § 97, eff from and after July 1, 1991.

Cross References — Jurisdiction of the circuit court to hear and determine all motions against sheriffs for money collected and not paid over to party entitled to same, see § 9-7-89.

Showing the return of any officer serving process to be untrue, see § 13-3-87.

Duty of the sheriff to execute and return process, see § 19-25-37.

Liability of the sheriff for failing to execute or return process, see § 19-25-37.

Liability of a sheriff for failing to return any execution, see § 19-25-41.

Liability of the sheriff for making false return on any process, see § 19-25-47.

Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

1. In general.

The penalty provided under this section [Code 1942, § 1862] for a failure of the sheriff to note on the execution the date of its receipt, was not recoverable against the sheriff and his sureties where the execution plaintiffs suffered no loss or injury by reason thereof and were not "aggrieved." McInnis v. Parker, 183 Miss. 648, 184 So. 418, 1938 Miss. LEXIS 277 (Miss. 1938).

List of special venire and copy of the indictment need not be served on accused by sheriff. Ivey v. State, 154 Miss. 60, 119 So. 507, 1928 Miss. LEXIS 198 (Miss. 1928).

The officer's return may be amended after judgment. H. Lupkin & Sons v. Russell, 108 Miss. 742, 67 So. 185, 1914 Miss. LEXIS 267 (Miss. 1914).

An officer's return of service of a summons which merely recites that the writ was on a certain day "executed by personal service" on the defendant is insufficient. The return should state the facts. Dogan v. Barnes, 76 Miss. 566, 24 So. 965, 1898 Miss. LEXIS 121 (Miss. 1898).

A defective return attempting to show personal service of process is not equivalent to the general return "executed" heretofore authorized under Code 1880, § 1528. Dogan v. Barnes, 76 Miss. 566, 24 So. 965, 1898 Miss. LEXIS 121 (Miss. 1898).

RESEARCH REFERENCES

Am. Jur.

62 Am. Jur. 2d (Rev), Process § 258.

CJS.

72 C.J.S., Process §§ 150–152 et seq.

§ 13-3-39. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1942, § 2910-09; Laws, 1962, ch. 257, § 9, eff from and after passage (approved June 1, 1962)]

Editor's Notes — Former § 13-3-39 provided for the execution and return of process from courts of the separate district in Harrison County.

§ 13-3-41. Service on one carrying on business in state by or through trustee or attorney in fact.

All persons, firms, copartnerships or corporations carrying on business in the State of Mississippi, by or through trustees or attorneys in fact, may be served with process in all suits or proceedings in any court, by serving a copy of such process upon an agent of such trustees or attorneys in fact, in the same manner as is now provided for service of process upon foreign corporations.

HISTORY: Codes, 1930, § 2979; 1942, § 1860; Laws, 1924, ch. 185.

Cross References — Notice to attorney at law being as effectual as if made to his client, see § 11-49-11.

Service of process upon a corporation, see § 13-3-49.

Service of process upon nonresident doing business within the state, see § 13-3-57.

Service of process upon nonresident motorist, see § 13-3-63.

Notification given foreign insurance company when process is served upon insurance commissioner as attorney for insurance company, see § 83-5-11.

For the rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

Requirement that corporate plaintiffs be represented by counsel, and circuit court rules concerning the filing and service of pleadings and motions, see Miss. Uniform Rules of Circuit and County Court Practice 1.06, 2.06.

RESEARCH REFERENCES

Am. Jur.

19 Am. Jur. 2d (Rev), Corporations §§ 1644- 1646, 1901 et seq.

36 Am. Jur. 2d, Foreign Corporations §§ 476 et seq.

59A Am. Jur. 2d, Partnership §§ 468-487.

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1.

CJS.

72 C.J.S., Process §§ 75, 76, 103, 104.

Lawyers' Edition.

State regulation of judicial proceedings as violating commerce clause (Art. I, § 8, cl 3) of Federal Constitution – Supreme Court cases. 100 L. Ed. 2d 1049.

§§ 13-3-43 through 13-3-47. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-3-43. [Codes, 1857, ch. 61, art. 64; 1871, § 704; 1880, § 1530; 1892, § 3430; 1906, § 3929; Hemingway's 1917, § 2936; 1930, § 2982; 1942, § 1863]

§ 13-3-45. [Codes, 1857, ch. 61, art. 64; 1871, § 705; 1880, § 1531; 1892, § 3431; 1906, § 3930; Hemingway's 1917, § 2937; 1930, § 2983; 1942, § 1864]

§ 13-3-47. [Codes, 1892, § 3432; 1906, § 3931; Hemingway's 1917, § 2938; 1930, § 2984; 1942, § 1865]

Editor's Notes — Former § 13-3-43 provided for service when defendant was an infant or an infant was a codefendant.

Former § 13-3-45 provided for service when defendant was of unsound mind.

Former § 13-3-47 provided for service when defendant was a county, city, town, or village.

§ 13-3-49. Service when defendant is a corporation.

If the defendant in any suit or legal proceeding be a corporation, process may be served on the president or other head of the corporation, upon the cashier, secretary, treasurer, clerk, or agent of the corporation, or upon any one of the directors of such corporation. If the defendant corporation be a sleeping-car company, process may be served upon any conductor thereof. If the defendant corporation be a steamboat company, process may be served upon the captain or other officer of a boat thereof. If no such person or persons be found in the county, then it shall be sufficient to post a true copy of the process on the door of the office or principal place of business of the corporation. In suits against railroads, sleeping-car, telegraph, telephone, express, steamboat, and insurance companies or corporations, or in suits against a receiver or receivers in charge of the property of any such companies or corporations, the process may be served on any agent of the defendant or sent to any county in which the office or principal place of business may be located, and there served as herein directed and authorized, or process may be served on any one of the foregoing officers of such corporation or company, and upon the secretary, cashier, treasurer, clerk, depot agent, attorney or any other officer or agent of such receiver or receivers, or upon them in person. When any writ or process against such corporation, company, receiver or receivers has been returned executed, the defendant or defendants shall be considered in court, and the action shall proceed as actions against natural persons. All process and notices to be served upon such companies, corporations, or receivers may be served as herein directed.

HISTORY: Codes, Hutchinson's 1848, ch. 15, art. 3 (1); 1857, ch. 61, art. 64; 1871, § 703; 1880, §§ 1035, 1529; 1892, § 3433; 1906, § 3932; Hemingway's 1917, § 2939; 1930, § 2985; 1942, § 1866; Laws, 1894, ch. 61.

Cross References — Service of process on one carrying on business in state by or through trustee or attorney in fact, see § 13-3-41.

Issuance and execution of process when an indictment is found against a corporation, see § 99-9-3.

Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

Circuit court filing and service requirements for pleadings and motions, see Miss. Uniform Rule of Circuit and County Court Practice 2.06.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Service on railroad company.
3. Service on insurance company.

1. In general.

Where city's process server placed summons and complaint for contract action in a box for registered agent of utility because the agent's office was closed for holidays, service was not effected under Miss. R. Civ. P. 4(d)(4) and Miss. Code Ann. § 13-3-49 until five days later when the offices reopened and the papers could be processed and sent to the utility. Thus, filing of the utility's removal notice was timely under 28 U.S.C.S. § 1446(b). City of Clarksdale v. BellSouth Telecomms., Inc., 428 F.3d 206, 2005 U.S. App. LEXIS 21698 (5th Cir. Miss. 2005).

The Mississippi statutes providing for the method of services on a resident or a qualified foreign corporation, the "doing business" statute, and the statute providing for substituted service on any corporation doing business in the state, must be read together, and such reading leads to the inescapable conclusion that effective process under these statutes presupposes a factual determination that the foreign corporation is doing business in the state of Mississippi. Hyde Constr. Co. v. Koehring Co., 321 F. Supp. 1193, 1969 U.S. Dist. LEXIS 13680 (D. Miss. 1969).

Summons was not effective where, at time received, there was no legal authority for service to be made by mail. Western Tar Products Corp. v. Alton Sheet Metal & Roofing Works, Inc., 515 So. 2d 932, 1987 Miss. LEXIS 2892 (Miss. 1987).

An employee of a corporation whose duties are generally those of a stenographer and receptionist is not an "agent" or "clerk" of the corporation within the meaning of this section [Code 1942, § 1866], and the service upon her of a writ of garnishment issued against the corporation will not suffice to support a judgment against the corporation as garnishee where the writ was not brought to the attention of any of the corporation's officers or agents. First Jackson Sec. Corp. v. B. F. Goodrich Co., 253 Miss. 519, 176 So. 2d 272, 1965 Miss. LEXIS 1010 (Miss. 1965).

This statute presupposes a doing of business in Mississippi in the case of a foreign corporation. Alabama, T. & N. R. Co. v. Howell, 244 Miss. 157, 141 So. 2d 242, 1962 Miss. LEXIS 433 (Miss. 1962).

Where a copy of summons and complaint in a suit against a domestic corporation was delivered to an individual for delivery to the president of the corporation and this individual was a clerk who later delivered the process to the president, this did not constitute a personal service on the defendant corporation. Hyde Constr. Co. v. Elton Murphy-Walter Travis, Inc., 227 Miss. 615, 86 So. 2d 455, 1956 Miss. LEXIS 733 (Miss. 1956).

Suit having been filed and process for defendant having been issued promptly by a clerk, a suit was pending which tolled running of statute of limitations though process was served on plantation manager of defendant corporation and not on its designated agent for receiving of service of process. Frederick Smith Enterprise Co. v. Lucas, 204 Miss. 43, 36 So. 2d 812, 1948 Miss. LEXIS 341 (Miss. 1948).

Service of process by person delivering copy of writ to president of corporation held not defective so as to make judgment void on collateral attack. McIntosh v. Munson Road Machinery Co., 167 Miss. 546, 145 So. 731, 1933 Miss. LEXIS 82 (Miss. 1933).

This statute must be complied with substantially in service on a corporation or it will be void. Anderson Mercantile Co. v. Cudahy Packing Co., 127 Miss. 301, 90 So. 11, 1921 Miss. LEXIS 225 (Miss. 1921).

Principal place of business is synonymous with domicile. Plummer-Lewis Co. v. Francher, 111 Miss. 656, 71 So. 907, 1916 Miss. LEXIS 360 (Miss. 1916).

A return of summons against a corporation where served on an agent should show that the party was an agent. Watkins Machine & Foundry Co. v. Cincinnati Rubber Mfg. Co., 96 Miss. 610, 52 So. 629, 1910 Miss. LEXIS 211 (Miss. 1910).

A return of personal service by delivery of a copy of the summons to one described as the agent of a corporation, being good on its face, objection thereto should be made by plea. Lamb v. Russel, 81 Miss. 382, 32 So. 916, 1902 Miss. LEXIS 122 (Miss. 1902).

2. Service on railroad company.

Service of summons on a foreign railroad company's station agent is sufficient to bring it into court. Illinois C. R. Co. v. McDaniel, 246 Miss. 600, 151 So. 2d 805, 1963 Miss. LEXIS 486 (Miss. 1963).

In an attachment suit brought in chancery court by an Alabama citizen to recover damages from an Alabama corporation for personal injuries received as a result of a railroad crossing accident in Alabama, and to attach funds in the hands of a Mississippi corporation, where the defendant corporation owned no property or did no business in Mississippi, service of process upon an employee designated as a superintendent of the defendant corporation but who was employed by another corporation, and received no compensation from defendant corporation, was not effective to confer territorial jurisdiction over the defendant corporation. Alabama, T. & N. R. Co. v. Howell, 244 Miss. 157, 141 So. 2d 242, 1962 Miss. LEXIS 433 (Miss. 1962).

Service of summons on a station agent of a railroad company is binding and this whether its principal place of business is in the county in which the suit is brought or not. Alabama & V. R. Co. v. Bolding, 69 Miss. 255, 13 So. 844, 1891 Miss. LEXIS 170 (Miss. 1891).

Where the declaration, summons, judgment by default and execution were against "Alabama & Vicksburg Railroad Company," "The Alabama & Vicksburg Railway Company," the real corporation, whose station agent was served with the summons, having failed to appear at the return term and to object to the misnomer, is bound by the judgment. Alabama & V. R. Co. v. Bolding, 69 Miss. 255, 13 So. 844, 1891 Miss. LEXIS 170 (Miss. 1891).

3. Service on insurance company.

Under the provisions of this section [Code 1942, § 1866], process in suits against insurance companies may be served on any agent of the defendant. Georgia Home Ins. Co. v. Holmes, 75 Miss. 390, 23 So. 183, 1897 Miss. LEXIS 137 (Miss. 1897).

OPINIONS OF THE ATTORNEY GENERAL

A scire facias may be personally served on a limited surety agent, and that process will be binding on the insurer represented by that agent. Johnson, November 6, 1998, A.G. Op. #98-0672.

A defendant corporation may be served by serving any of the persons enumerated in the statute, the president or other head of the corporation, the cashier, secretary, treasurer, clerk, or agent of the corporation; if garnishment papers are properly served on one of the required persons, the corporation is considered properly served even if the papers are not forwarded to the payroll department. Aldridge, Feb. 1, 2002, A.G. Op. #02-0031.

A defendant corporation may be served by serving any of the persons enumerated in Section 13-3-49. A defendant does not have the option of "refusing service." Refusing to accept service is equal to being served. Case, June 22, 1995, A.G. Op. #95-0325.

RESEARCH REFERENCES

ALR.

Foreign corporation's purchase within state of goods to be shipped into other state or country as doing business within state for purposes of jurisdiction or service of process. 12 A.L.R.2d 1439.

Service of process upon dissolved domestic corporation in absence of express statutory direction. 75 A.L.R.2d 1399.

Am. Jur.

19 Am. Jur. 2d (Rev), Corporations §§ 1644- 1646, 1901 et seq.

36 Am. Jur. 2d (Rev), Foreign Corporations §§ 476 et seq.

62 Am. Jur. 2d, Process § 127, 129.

CJS.

19 C.J.S., Corporations §§ 894, 895, 897 et seq.

72 C.J.S., Process §§ 75, 76.

§ 13-3-51. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1857, ch. 61, art. 64; 1871, § 706; 1880, § 1532; 1892, § 3434; 1906, § 3933; Hemingway's 1917, § 2940; 1930, § 2986; 1942, § 1867]

Editor's Notes — Former § 13-3-51 provided for service when defendant was a prisoner.

§ 13-3-53. Service on one of several executors or administrators.

If there be two or more executors or administrators of the same estate, if process cannot be served on all of them in suits against them, service on one shall be sufficient to authorize a judgment against all.

HISTORY: Codes, 1857, ch. 60, art. 134; 1871, § 1192; 1880, § 1513; 1892, § 3435; 1906, § 3934; Hemingway's 1917, § 2941; 1930, § 2987; 1942, § 1868.

Cross References — Liability of executors and administrators to be sued in personal actions which might have been maintained against the deceased, see § 91-7-233.

Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

Circuit court filing and service requirements for pleadings and motions, see Miss. Uniform Rule of Circuit and County Court Practice 2.06.

§ 13-3-55. Suits by or against partnerships; service on one of several partners.

A partnership may sue or be sued in the partnership name, or in the names of the individuals composing the partnership, or both and service of process on any partner shall be sufficient to maintain the suit against all the partners so as to bind the assets of the partnership and of the individual summoned.

HISTORY: Codes, 1880, § 1519; 1892, § 3436; 1906, § 3935; Hemingway's 1917, § 2942; 1930, § 2988; 1942, § 1869; Laws, 1977, ch. 405, eff from and after April 1, 1977.

Cross References — Circuit court filing and service requirements for pleadings and motions, see Miss. Uniform Rule of Circuit and County Court Practice 2.06.

Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Partnership property separate from partner's personal property.

1. In general.

In action on partnership notes, one partner held not indispensable party since obligation joint and several and judgment against some would not affect plaintiff's right against others unless satisfaction obtained. Enochs-Flowers, Ltd. v. Bank of Forest, 172 Miss. 36, 157 So. 711, 159 So. 407, 1934 Miss. LEXIS 385 (Miss. 1934).

A judgment against all of several partners, when only one has been summoned, is erroneous as to those not served, unless it appear by the return or elsewhere in the record that those not summoned were nonresident or could not be found. Tabler, Crudup & Co. v. Bryant, 62 Miss. 350, 1884 Miss. LEXIS 79 (Miss. 1884).

2. Partnership property separate from partner's personal property.

Judgment of the district court in a case to determine ownership of cattle, granting summary judgment for the buyer of the cattle on the ground that the apparent seller was the owner and passed title to the buyer free of a lien, was reversed and remanded, because a fact issue existed on the ownership of the apparent seller; plaintiff bank's and defendant bank's security interests properly perfected on an individual and his property, attached to the cattle only if the apparent seller was a sole proprietorship of the individual, but if the apparent seller operated as a partnership or limited liability company, the individual did not have sufficient rights in the cattle to encumber them. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549, 2007 U.S. App. LEXIS 24018 (5th Cir. Miss. 2007).

RESEARCH REFERENCES

ALR.

What amounts to doing business in a state within statute providing for service of process in action against nonresident natural person or persons doing business in state. 10 A.L.R.2d 200.

Am. Jur.

59A Am. Jur. 2d (Rev), Partnership §§ 304- 308.

CJS.

68 C.J.S., Partnership §§ 252-256.

72 C.J.S., Process §§ 103, 104.

§ 13-3-57. Service on nonresident business not qualified to do business in state; survival of cause of action in case of death or inability to act; service on nonresident executor, administrator, etc.

Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state. Service of summons and process upon the defendant shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

Any such cause of action against any such nonresident, in the event of death or inability to act for itself or himself, shall survive against the executor, administrator, receiver, trustee, or any other selected or appointed representative of such nonresident. Service of process or summons may be had or made upon such nonresident executor, administrator, receiver, trustee or any other selected or appointed representative of such nonresident as is provided by the Mississippi Rules of Civil Procedure, and when such process or summons is served, made or had against the nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident it shall be deemed sufficient service of such summons or process to give any court in this state in which such action may be filed, in accordance with the provisions of the statutes of the State of Mississippi or the Mississippi Rules of Civil Procedure, jurisdiction over the cause of action and over such nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident insofar as such cause of action is involved.

The provisions of this section shall likewise apply to any person who is a nonresident at the time any action or proceeding is commenced against him even though said person was a resident at the time any action or proceeding accrued against him.

HISTORY: Codes, 1942, §§ 1437, 1438; Laws, 1940, ch. 246; Laws, 1958, ch. 245, § 1; Laws, 1964, ch. 320, § 1; Laws, 1968, ch. 330, § 1; Laws, 1971, ch. 431, § 1; Laws, 1978, ch. 378, § 1; Laws, 1980, ch. 437; Laws, 1991, ch. 573, § 98, eff from and after July 1, 1991.

Cross References — For another section derived from same 1942 code section, see § 11-11-11.

Service of process when defendant is a nonresident motorist, see § 13-3-63.

Service of process upon carnivals, circuses, and fairs doing business in state but not permanently domiciled therein, see §§ 75-75-1 and 75-75-3.

Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

Circuit court filing and service requirements for pleadings and motions, see Miss. Uniform Rule of Circuit and County Court Practice 2.06.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application, generally.
3. What constitutes doing business within state.
4. Non-resident heirs of alleged tortfeasor.
5. Illustrative cases.

1. Validity.

Dismissal of the insured's action against her insurer in Mississippi for bad faith was improper where there was no personal or subject matter jurisdiction over the insurer, Miss. Code Ann. § 13-3-57; the only connection Mississippi had to the lawsuit was that the car accident occurred in Mississippi and the lawsuit was not about the accident. Hogrobrooks v. Progressive Direct, 858 So. 2d 913, 2003 Miss. App. LEXIS 1029 (Miss. Ct. App. 2003).

The long-arm statute was clearly enacted for the benefit of residents only, and it has not been expanded through the process of judicial interpretation to include nonresident plaintiffs not qualified to do business within the state; there is no defect under federal constitutional standards for limiting the long-arm statute to resident plaintiffs, since the state is not obligated to make its courts available to nonresidents, who themselves are not doing business in the state, to sue other nonresidents. American International Pictures, Inc. v. Morgan, 371 F. Supp. 528, 1974 U.S. Dist. LEXIS 12866 (N.D. Miss. 1974).

This section [Code 1942, § 1437] and Code 1942, § 8072 do not violate the due process clause of the Constitution of the United States. Jarrard Motors, Inc. v. Jackson Auto & Supply Co., 237 Miss. 660, 115 So. 2d 309, 1959 Miss. LEXIS 517 (Miss. 1959).

If a nonresident is doing such business in the state as would subject him to the jurisdiction of the court and such business is of such nature that it is hazardous or subject to the police powers of the state to be regulated, and the cause of action grows out of such business so done, then the substituted service is good and the statute is constitutional. Davis v. Nugent, 90 F. Supp. 522, 1950 U.S. Dist. LEXIS 3816 (D. Miss. 1950).

There is no denial of due process under the 14th Amendment of the United States Constitution in extending this section [Code 1942, § 1437] to contract, as well as to tort actions, arising out of business or acts done within state. Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 1951 Miss. LEXIS 322 (Miss. 1951).

Nonresident who engages in business in this state which is subject to state control is subject to suit for damages in this state on cause of action accruing here out of business transacted in this state and is properly brought into court by service of process upon secretary of state in manner provided by Code 1942, § 1438, and statutes so providing do not violate due process or immunities and privileges clauses of federal constitution. Condon v. Snipes, 205 Miss. 306, 38 So. 2d 752, 1949 Miss. LEXIS 433 (Miss. 1949).

This statute, as applied to a corporate citizen of another state engaged in levy construction work of large proportions in Mississippi employing many men to operate trucks and other heavy and cumbersome machinery and equipment, is not unconstitutional as denying defendant equal protection of the law, due process of law, or privileges and immunities afforded to residents, or as burdening interstate commerce. Sugg v. Hendrix, 142 F.2d 740, 1944 U.S. App. LEXIS 3496 (5th Cir. Miss. 1944).

Power of state to confer jurisdiction on courts over individual nonresidents by substituted service depends upon whether such enabling statute is a reasonable exercise of the state's police power to regulate the business of such nonresident, and if the regulation is one for the protection of health, safety and welfare of those within its borders, rather than a mere attempt to extend the jurisdiction of its courts over citizens beyond its borders, the state may properly legislate to that end. Sugg v. Hendrix, 142 F.2d 740, 1944 U.S. App. LEXIS 3496 (5th Cir. Miss. 1944).

2. Construction and application, generally.

After an employee was terminated, and his employers refused to reimburse his expenses, the court did not have personal jurisdiction over the individuals working for the employer as the employee alleged no facts supporting the individuals' involvement in his tort claims. Smith v. Antler Insanity, LLC, 58 F. Supp. 3d 716, 2014 U.S. Dist. LEXIS 152484 (S.D. Miss. 2014).

In a breach of contract and tortious inference with business relations case that was removed to federal court pursuant to 28 U.S.C.S. § 1446 and in which the court accepted as true a Mississippi company's assertion that it and a foreign company contemplated that the contract would be performed in part in Mississippi and that the contract was in fact performed in part in Mississippi, the district court had no difficulty concluding that Mississippi's long-arm statute, Miss. Code Ann. § 13-3-57, was satisfied; since the district court also found that the requirements of due process were met, the foreign company's Fed. R. Civ. P. 12(b)(2) motion to dismiss was denied. Barbour Int'l, Inc. v. Permasteel, Inc., 507 F. Supp. 2d 602, 2007 U.S. Dist. LEXIS 56518 (S.D. Miss. 2007).

In a matter arising out of a high speed chase, which allegedly resulted in decedents' deaths, neither an Alabama county or that county's sheriff from Alabama entered upon the highways of Mississippi, involving themselves in efforts to stop the fleeing felons, or in any other way subjected themselves to jurisdiction under Miss. Code Ann. § 13-3-63; therefore, the supreme court proceeded with a long-arm analysis to determine if jurisdiction could be conferred upon them under the Mississippi long-arm statute, Miss. Code Ann. § 13-3-57, and the supreme court found no minimum contacts, so the county and the sheriff were not subject to personal jurisdiction in Mississippi. City of Cherokee v. Parsons, 944 So. 2d 886, 2006 Miss. LEXIS 583 (Miss. 2006).

To establish the "contract" prong of the Mississippi long-arm statute, Miss. Code Ann. § 13-3-57, a plaintiff must show that a nonresident defendant entered into a contract with the plaintiff which has been, or is to be, performed, at least in part, in Mississippi. Durham v. Katzman, 375 F. Supp. 2d 495, 2005 U.S. Dist. LEXIS 17847 (S.D. Miss. 2005).

Trial court erred in denying New York commuter van company's motion to dismiss for lack of personal jurisdiction under Miss. R. Civ. P. 12(b) in the Mississippi residents' wrongful death action that arose following an auto accident that occurred in New York because, although the van company was not qualified to do business in Mississippi and, therefore, met the threshold requirement for coverage by the long-arm statute, Miss. Rev. Stat. § 13-3-57, there was no evidence in the record to demonstrate that the van company's actions had brought it under either the contract, tort, or "doing business in" provisions of the long-arm statute. Rockaway Commuter Line, Inc. v. Denham, 897 So. 2d 156, 2004 Miss. LEXIS 1325 (Miss. 2004).

Defendants, by demonstrating that the individuals' claims against the non-diverse defendants were time-barred, sustained their burden of showing that no reasonable possibility of recovery existed against the non-diverse defendants on the claims raised in the individuals' original complaint; while the individuals argued that their claims were not time-barred because defendants' fraudulent concealment tolled the statute of limitations, they were unable to support their fraudulent concealment claim. Thus, the individuals' motion to remand was denied. White v. City Fin. Co., 277 F. Supp. 2d 646, 2003 U.S. Dist. LEXIS 14205 (S.D. Miss. 2003).

The contract prong of the long-arm statute was satisfied by the allegations of breach of implied warranty of merchantability and the breach of implied warranty of fitness for a particular purpose claims where at least part of the warranty work was performed in the forum state; the misrepresentation claim against the manufacturer was sufficient to support jurisdiction under the tort prong of the long-arm statute because the materials and a representative were sent to the forum state. Jones v. Tread Rubber Corp., 199 F. Supp. 2d 539, 2002 U.S. Dist. LEXIS 9102 (S.D. Miss. 2002).

In an action arising from a contract under which the plaintiff was to sell 80 percent of its oil and gas working interest in an oil and gas field, the plaintiff set out a prima facie case for personal jurisdiction under the contract prong of the statute and, therefore, the district court erred in dismissing the defendant for lack of personal jurisdiction where the plaintiff argued that a codefendant entered into a contract with the plaintiff on behalf of itself and the defendant, which financed and purchased 75 percent of the 80 percent working interest in the oil and gas field. Stripling v. Jordan Prod. Co., 234 F.3d 863, 2000 U.S. App. LEXIS 29871 (5th Cir. Miss. 2000).

The defendant was subject to personal jurisdiction within Mississippi in an action for libel and slander where the plaintiff alleged that the defendant published the alleged defamatory information complained of on the Internet and allowed access and publication within Mississippi and among Mississippi residents. Lofton v. Turbine Design, Inc., 100 F. Supp. 2d 404, 2000 U.S. Dist. LEXIS 4593 (N.D. Miss. 2000).

The defendants were subject to personal jurisdiction in an action for breach of a contract regarding a distribution agreement where part of the contract required the plaintiff to perform acts in Mississippi and where the plaintiff also alleged, with evidentiary support, that the defendants committed various torts at least in part in Mississippi which resulted in injury to the plaintiff and that the defendants were engaged in doing business in Mississippi. Genesis Press, Inc. v. Carol Publ. Group, Inc., 2000 U.S. Dist. LEXIS 4595 (N.D. Miss. Mar. 30, 2000).

The parties did not enter into a contract to be performed in whole or in part by any party in Mississippi where the defendant agreed to provide certain land accommodations in Greece and round-trip airfare from New York to Greece, but did not agree to deliver air tickets to the plaintiffs in Mississippi. Christian Tours, Inc. v. Homeric Tours, Inc., 2000 U.S. Dist. LEXIS 4594 (N.D. Miss. Mar. 30, 2000), aff'd, 239 F.3d 366, 2000 U.S. App. LEXIS 30099 (5th Cir. Miss. 2000).

A contract between the plaintiff Mississippi corporation and the defendant Tennessee corporation involving the purchase of the defendant's assets required actions in Mississippi, and therefore, the defendant fell under the broad reach of the Mississippi long-arm statute. Willowbrook Found., Inc. v. Visiting Nurse Ass'n, 87 F. Supp. 2d 629, 2000 U.S. Dist. LEXIS 2105 (N.D. Miss. 2000).

Where resident plaintiffs alleged, with evidentiary support, that the defendants committed the torts of defamation and tortious interference with business relations, at least in part, through their activities in Mississippi, such was sufficient to establish a prima facie case of personal jurisdiction under the tort prong of the statute. Wells v. Taylor, 1999 U.S. Dist. LEXIS 17891 (N.D. Miss. Oct. 25, 1999).

The defendant Arkansas corporation was not subject to personal jurisdiction under the Mississippi long-arm statute where the defendant had limited contact with Mississippi, such contacts were sporadic, incidental and indirectly associated with the forum, and the defendant did not and had not conducted business in Mississippi. Thrash Aviation, Inc. v. Kelner Turbine, Inc., 72 F. Supp. 2d 709, 1999 U.S. Dist. LEXIS 17788 (S.D. Miss. 1999).

Under tort prong of Mississippi long-arm statute, personal jurisdiction is proper if any element of tort (or any part of any element) takes place in Mississippi. Allred v. Moore & Peterson, 117 F.3d 278, 1997 U.S. App. LEXIS 18148 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1048, 118 S. Ct. 691, 139 L. Ed. 2d 637, 1998 U.S. LEXIS 71 (U.S. 1998).

Under Mississippi law, malicious prosecution requires institution or continuation of original judicial proceedings, either criminal or civil; by, or at instance of defendants; termination of such proceedings in plaintiff's favor; malice in instituting proceedings; want of probable cause in proceedings; and suffering of damages as result of action or prosecution complained of. Allred v. Moore & Peterson, 117 F.3d 278, 1997 U.S. App. LEXIS 18148 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1048, 118 S. Ct. 691, 139 L. Ed. 2d 637, 1998 U.S. LEXIS 71 (U.S. 1998).

Suffering of damages within state from alleged malicious prosecution was insufficient, without more, to support personal jurisdiction under tort prong of Mississippi long-arm statute. Allred v. Moore & Peterson, 117 F.3d 278, 1997 U.S. App. LEXIS 18148 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1048, 118 S. Ct. 691, 139 L. Ed. 2d 637, 1998 U.S. LEXIS 71 (U.S. 1998).

For purposes of Mississippi long-arm statute, injury suffered in malicious prosecution tort is institution of criminal or civil proceedings where institution ought not to have occurred (and occurred for an improper reason); Mississippi does not permit damages to serve as a proxy for injury in personal jurisdiction calculus. Allred v. Moore & Peterson, 117 F.3d 278, 1997 U.S. App. LEXIS 18148 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1048, 118 S. Ct. 691, 139 L. Ed. 2d 637, 1998 U.S. LEXIS 71 (U.S. 1998).

Service of process by certified mail from out of state, apart from actual filing of suit, was not basis for malicious prosecution claim and could not support exercise of personal jurisdiction under tort prong of Mississippi long-arm statute. Allred v. Moore & Peterson, 117 F.3d 278, 1997 U.S. App. LEXIS 18148 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1048, 118 S. Ct. 691, 139 L. Ed. 2d 637, 1998 U.S. LEXIS 71 (U.S. 1998).

In a medical malpractice action against a Tennessee hospital and its emergency room personnel arising from the death of a patient who was to be transported from Mississippi to the hospital, neither the contract nor the doing business prong of the long-arm statute (§ 13-3-57) was available to the plaintiff as a means of acquiring jurisdiction over the hospital where the plaintiff was a nonresident of Mississippi. Cowart v. Shelby County Health Care Corp., 911 F. Supp. 248, 1996 U.S. Dist. LEXIS 579 (S.D. Miss. 1996).

In a medical malpractice action against a Tennessee hospital and its emergency room personnel arising from the death of a patient who was allegedly treated with inappropriate medication while being transported from a Mississippi hospital to the hospital in Tennessee, the plaintiff made a prima facie showing of jurisdiction over the Tennessee hospital pursuant to § 13-3-57 for the alleged actions of an emergency room physician who agreed to accept the transfer. Cowart v. Shelby County Health Care Corp., 911 F. Supp. 248, 1996 U.S. Dist. LEXIS 579 (S.D. Miss. 1996).

In an action by a Mississippi plaintiff alleging various torts arising from a Missouri defendant's repair and replacement of the plaintiff's diesel engines, the defendant was not subject to personal jurisdiction in Mississippi, although the tort prong of Mississippi's long arm statute (§ 13-3-57) applied because the engines malfunctioned in Mississippi, where, inter alia, the defendant was not qualified to do business in Mississippi, had never done business in Mississippi, owned no property in Mississippi, had no place of business in Mississippi, did not advertise or sell products in Mississippi, and was careful to protect its distribution agreement, which forbid it from providing any sales and services outside Kansas and part of Missouri; exercise of jurisdiction under the long-arm statute would not comport with the dictates of Fourteenth Amendment. Fava Custom Applicators v. Cummins Mid-America, 907 F. Supp. 224, 1995 U.S. Dist. LEXIS 18797 (N.D. Miss. 1995).

A foreign defendant was not amenable to suit under the "contract" provision of Mississippi's long-arm statute (§ 13-3-57) where the final version of the contract was signed in Louisiana, the parties never contemplated that the contract would be performed in whole or in part in Mississippi, and the work under the contract was actually performed in Algeria; the fact that the plaintiff flew to the job site in Algeria from Mississippi did not render his travel from Mississippi equivalent to part performance in Mississippi. Peterson v. Test Int'l, E.C., 904 F. Supp. 574, 1995 U.S. Dist. LEXIS 17100 (S.D. Miss. 1995).

In an action for alleged interference with an employment contract, a foreign defendant was not amenable to suit under the "tort" provision of Mississippi's long-arm statute (§ 13-3-57) where the plaintiff was hired to provide services in Algeria, and the alleged injury occurred in Algeria (where the plaintiff was terminated); the fact that the plaintiff, as a Mississippi resident, might have suffered adverse economic consequences in Mississippi from his termination in Algeria did not recategorize the tort as occurring "in whole or in part" in Mississippi. Peterson v. Test Int'l, E.C., 904 F. Supp. 574, 1995 U.S. Dist. LEXIS 17100 (S.D. Miss. 1995).

In a personal injury action by a Mississippi plaintiff arising from an automobile accident that occurred in Tennessee, the nonresident defendant's consummation of an agreement to breed her dog in Mississippi, and her installation of a telephone line at a friend's home in Mississippi when she briefly stayed there, were insufficient to meet the "contract" prong of the Mississippi long arm statute (§ 13-3-57) where the Tennessee automobile accident was unrelated to the contracts performed by the defendant in Mississippi. McLaurin v. Nazar, 883 F. Supp. 112, 1995 U.S. Dist. LEXIS 5550 (N.D. Miss.), aff'd, 71 F.3d 878, 1995 U.S. App. LEXIS 36819 (5th Cir. Miss. 1995).

In an action for an alleged breach of an agreement to purchase shares of stock in a coal mining company located in Kentucky, the requirements of the Mississippi long-arm statute (§ 13-3-57) were met as to the Kentucky defendants where all parties had duties of performance in Mississippi under the sale and escrow agreements, and negotiations conducted by one defendant by telephone or facsimile to Mississippi were made on behalf of both defendants. First Miss. Corp. v. Thunderbird Energy, 876 F. Supp. 840, 1995 U.S. Dist. LEXIS 1875 (S.D. Miss. 1995).

In an action by a Mississippi insurer against an Alabama resident and his Alabama attorney for breach of a settlement agreement arising out of a medical malpractice action, the defendants were subject to jurisdiction under Mississippi's long-arm statute (§ 13-3-57), although the defendants received and cashed the settlement check in Alabama, and executed (and altered) the release document in Alabama, where the parties negotiated and ultimately entered the settlement agreement with the Mississippi insurance company in Mississippi, the settlement check was sent from Mississippi and ultimately paid by a Mississippi bank, and the release was sent to the defendants from Mississippi and was to be returned to Mississippi. Medical Assurance Co. v. Jackson, 864 F. Supp. 576, 1994 U.S. Dist. LEXIS 14703 (S.D. Miss. 1994).

A nonresident defendant must do more than merely place its product in the "stream of commerce" before its actions will be deemed "purposefully directed" at Mississippi for purposes of due process analysis. Sorrells v. R & R Custom Coach Works, 636 So. 2d 668, 1994 Miss. LEXIS 240 (Miss. 1994).

A nonresident manufacturer's placement of its product into the stream of commerce did not constitute an act "purposefully directed" toward Mississippi where there was no evidence of any activity by the manufacturer indicative of an intent to serve the Mississippi market; thus, the limitations of the due process clause prevented utilization of § 13-3-57 to gain personal jurisdiction over the manufacturer. Sorrells v. R & R Custom Coach Works, 636 So. 2d 668, 1994 Miss. LEXIS 240 (Miss. 1994).

In an action against a nonresident church and archdiocese, alleging that a priest engaged in homosexual activity with the plaintiff at homes in Mississippi and that church officials knew that the plaintiff was staying overnight with the priest, and should have known that homosexual activity would occur, personal jurisdiction did not exist over the church and archdiocese under the Mississippi long-arm statute (§ 13-3-57), since the plaintiff failed to prove a prima facie case on which jurisdiction was based predicated on theories of respondeat superior, negligent hiring, or negligent supervision. Tichenor v. Roman Catholic Church, 869 F. Supp. 429, 1993 U.S. Dist. LEXIS 20435 (E.D. La. 1993).

Long-arm statute could not be used as basis for obtaining personal jurisdiction in product liability action brought against non-resident defendants who were doing business in Mississippi and who were licensed as automobile manufacturers or dealers under Mississippi Motor Vehicle Commission Law, where defendants were not registered to do business in Mississippi, automobile accident which gave rise to action occurred in another state, and action was brought by non-resident plaintiffs. Herrley v. Volkswagen of America, Inc., 957 F.2d 216, 1992 U.S. App. LEXIS 6167 (5th Cir. Miss. 1992).

A Louisiana railroad corporation which was not qualified to do business in Mississippi was not amenable to suit in Mississippi under § 13-3-57 where neither the plaintiff nor the accident giving rise to the action had any connection with Mississippi or with any business conducted by the railroad corporation in Mississippi. Southern Pacific Transp. Co. v. Fox, 609 So. 2d 357, 1992 Miss. LEXIS 421 (Miss. 1992).

Personal jurisdiction could be exercised over a nonresident putative father in a paternity and support action where the nonresident had been present in the state as a student at a state university, he had sexual relations with the mother in the state, and he had subsequently failed to support the child who resided in the state. Jones v. Chandler, 592 So. 2d 966, 1991 Miss. LEXIS 984 (Miss. 1991).

"Doing business" prong of long-arm statute may not be utilized by nonresident plaintiff. Madison v. Revlon, Inc., 789 F. Supp. 758, 1991 U.S. Dist. LEXIS 20080 (S.D. Miss. 1991).

In action, brought by truck driver who was injured when rubber strap broke as driver was attempting to attach it to tarp, against Ohio manufacturer of strap which sold strap to Alabama company which in turn sold it to plaintiff's employee, evidence failed to establish that part of tort occurred in Mississippi for purposes of determining whether personal jurisdiction could be asserted there over Ohio manufacturer; although plaintiff made products liability allegation that he received box containing allegedly defective straps from his employer in Mississippi, plaintiff did not attempt to use strap until he reached Oklahoma, injury occurred in Oklahoma, none of manufacturer's actions were directed towards Mississippi, and none of alleged acts took place in Mississippi. Yates v. Turzin, 786 F. Supp.

594, 1991 U.S. Dist. LEXIS 20499 (S.D. Miss. 1991).

In action, brought by truck driver injured when rubber strap broke as he attempted to attach it to tarp, against Ohio manufacturer of strap which sold strap to Alabama company which in turn sold it to plaintiff's employer, evidence failed to establish sufficient basis to subject manufacturer to long-arm jurisdiction on theory of strict tort liability, notwithstanding that manufacturer was sufficiently engaged in business of selling rubber strap to be considered "seller," as none of manufacturer's sales activities or solicitations took place in or were directed towards Mississippi. Yates v. Turzin, 786 F. Supp. 594, 1991 U.S. Dist. LEXIS 20499 (S.D. Miss. 1991).

Non-resident plaintiff may not use "doing business" prong of long-arm statute to obtain in personam jurisdiction over nonresident defendant. Prince v. F. Hoffmann-La Roche & Co., 780 F. Supp. 417, 1991 U.S. Dist. LEXIS 18821 (S.D. Miss. 1991).

Assuming it was otherwise available to plaintiff, Mississippi statute providing that non-resident corporations found doing business in Mississippi would be subject to suit in state to same extent as domestic corporations, regardless of whether cause of action accrued within or outside of state, did not provide statutory basis for assertion of personal jurisdiction over nonresident corporation in personal injury action by nonresident plaintiff, where Mississippi long-arm statute would not allow that result. Prince v. F. Hoffmann-La Roche & Co., 780 F. Supp. 417, 1991 U.S. Dist. LEXIS 18821 (S.D. Miss. 1991).

Nonresident defendant is amenable to personal jurisdiction in federal diversity case to extent permitted by state court in state in which federal court sits. Falco Lime, Inc. v. Tide Towing Co., 779 F. Supp. 58, 1991 U.S. Dist. LEXIS 17756 (N.D. Miss. 1991).

Under particular facts, it would not be unfair or offend due process for Mississippi court to exercise jurisdiction in suit by Mississippi corporation against Illinois corporation which had agreed to move Mississippi corporation's barges which had become stranded in river; defendant's activities in Mississippi were such that it could reasonably foresee being hailed into court in Mississippi. Falco Lime, Inc. v. Tide Towing Co., 779 F. Supp. 58, 1991 U.S. Dist. LEXIS 17756 (N.D. Miss. 1991).

In determining whether exercise of long arm jurisdiction under state statute comports with due process requirements, court must determine whether defendant has established sufficient contacts with forum state indicating purposeful availment of privilege of conducting activities within forum and thereby invoking benefits and protection of its laws, with focus of inquiry at this stage being upon nature of underlying litigation. Falco Lime, Inc. v. Tide Towing Co., 779 F. Supp. 58, 1991 U.S. Dist. LEXIS 17756 (N.D. Miss. 1991).

Extent of jurisdiction of federal court over nonresident defendant depends on whether defendant is amenable to service of process under forum state's long arm statute and whether such exercise of jurisdiction would comport with dictates of due process. Falco Lime, Inc. v. Tide Towing Co., 779 F. Supp. 58, 1991 U.S. Dist. LEXIS 17756 (N.D. Miss. 1991).

In deciding whether federal court sitting in diversity has jurisdiction over nonresident defendant, reach of long arm statute should be determined before considering whether exercise of jurisdiction would comport with due process, for if service was defective under state statute, constitutional issue should not even be considered. Falco Lime, Inc. v. Tide Towing Co., 779 F. Supp. 58, 1991 U.S. Dist. LEXIS 17756 (N.D. Miss. 1991).

State's long-arm statute relating to tort actions did not authorize jurisdiction over foreign corporation which had entered into charter agreement with Mississippi corporation seeking damages for loss of use of barges which allegedly went aground as result of Illinois corporation's negligence in maintaining and operating tug. Falco Lime, Inc. v. Tide Towing Co., 779 F. Supp. 58, 1991 U.S. Dist. LEXIS 17756 (N.D. Miss. 1991).

Mississippi's long arm statute's contract provision served to confer personal jurisdiction over Illinois corporation which had entered into charter agreement with Mississippi corporation seeking damages for loss of use of barges which allegedly ran aground as result of Illinois corporation's negligent maintenance and operation of tug. Falco Lime, Inc. v. Tide Towing Co., 779 F. Supp. 58, 1991 U.S. Dist. LEXIS 17756 (N.D. Miss. 1991).

In order for "tort" prong of long-arm statute to apply, at least some part of tort must have been committed within Mississippi. Murray v. Remington Arms Co., 795 F. Supp. 805, 1991 U.S. Dist. LEXIS 20550 (S.D. Miss. 1991).

In products liability action brought against defendant manufacturer of rifle, tort provision of long-arm statute would not form basis for jurisdiction over nonresident manufacturer where allegations are that injuries to various plaintiffs occurred in Texas, Washington, and Canada. Murray v. Remington Arms Co., 795 F. Supp. 805, 1991 U.S. Dist. LEXIS 20550 (S.D. Miss. 1991).

Nonresident plaintiffs may not utilize "doing business" provision of long-arm statute to obtain jurisdiction over nonresident defendant. Murray v. Remington Arms Co., 795 F. Supp. 805, 1991 U.S. Dist. LEXIS 20550 (S.D. Miss. 1991).

In products liability action, nonresident plaintiffs could not use "doing business" provision of long-arm statute to obtain personal jurisdiction over nonresident defendant manufacturer, even if court considered as true, for purposes of litigation, assertion that defendant manufacturer was alter ego of co-defendant, its parent corporation, which had registered agent in state and had not challenged personal jurisdiction; there was no Mississippi law to support intended use of alter ego theory to impute residency of parent corporation to subsidiary. Murray v. Remington Arms Co., 795 F. Supp. 805, 1991 U.S. Dist. LEXIS 20550 (S.D. Miss. 1991).

Nonresidents may not utilize "doing business" provision of long-arm statute to invoke jurisdiction in Mississippi over foreign corporation. Ferry v. Langston Corp., 792 F. Supp. 512, 1990 U.S. Dist. LEXIS 20053 (S.D. Miss. 1990).

For defendant to be amenable to process under "doing business" provision of long-arm statute, there must be nexus between defendant's activities in Mississippi and plaintiff's cause of action; however, there is no requirement that there be direct relation or nexus between the two, claim must merely be "incident to" such business. Ferry v. Langston Corp., 792 F. Supp. 512, 1990 U.S. Dist. LEXIS 20053 (S.D. Miss. 1990).

There was no sufficient connection, to form basis for long-arm jurisdiction, between defendant manufacturer's business activity in Mississippi and injury sustained by plaintiffs' deceased by machine manufactured by defendant, where defendant was New Jersey corporation which sold machine to deceased's employer in Louisiana, deceased had lived and worked in Louisiana, and plaintiffs resided in Louisiana; all that appeared from submissions to court was that defendant sold equipment in interstate commerce and had sold equipment which was distributed to Mississippi purchasers. Ferry v. Langston Corp., 792 F. Supp. 512, 1990 U.S. Dist. LEXIS 20053 (S.D. Miss. 1990).

Nonresident of state of Mississippi may not utilize "doing business" provision of long-arm statute as basis for jurisdiction over foreign corporation in Mississippi. Bailiff v. Manville Forest Products Corp., 792 F. Supp. 509, 1990 U.S. Dist. LEXIS 20052 (S.D. Miss. 1990).

Personal jurisdiction would not lie, over nonresident manufacturer, under long-arm statute or under due process clause, where manufacturer was organized or existed under laws of Federal Republic of Germany, was not qualified to do business in Mississippi, had no real estate, personal property, bank accounts, or other property in state, had never entered into contract to be performed within state, and had never performed any act which had or could have had effect within state. Bailiff v. Manville Forest Products Corp., 792 F. Supp. 509, 1990 U.S. Dist. LEXIS 20052 (S.D. Miss. 1990).

Mississippi long-arm statute allows for assertion of jurisdiction over person of nonresident defendant who makes contract with resident of Mississippi to be performed in whole or in part, by either party, within Mississippi; or who commits tort in whole or in part in Mississippi; or who does any business or performs any character of work or service in state. Bailiff v. Manville Forest Products Corp., 792 F. Supp. 509, 1990 U.S. Dist. LEXIS 20052 (S.D. Miss. 1990).

In action brought by California residents against asbestos products manufacturers alleging damages as result of presence of asbestos-containing materials in buildings located outside Mississippi, claims for fraud and conspiracy accrued at time of sale of products, which was before 1980 when § 13-3-57 was amended, thus District Court in Mississippi lacked jurisdiction under tort prong of statute. Black v. Carey Canada, Inc., 791 F. Supp. 1120, 1990 U.S. Dist. LEXIS 20087 (S.D. Miss. 1990).

Sale of asbestos-containing products in Mississippi and alleged misrepresentation by defendant manufacturers as to consequences of exposure of such products did not subject defendants to service of process under tort provisions of § 13-3-57; otherwise all manufacturers who commit mass torts would be subject to service of process under tort provisions of statute, which would swallow all restrictions placed on long-arm statute. Black v. Carey Canada, Inc., 791 F. Supp. 1120, 1990 U.S. Dist. LEXIS 20087 (S.D. Miss. 1990).

In order for jurisdiction to have been proper as to defendants who owned a weekend home in Mississippi but whose "usual place of abode" was in Louisiana, service of process should have been made pursuant to Mississippi's long-arm statute, since the defendants owned real property in Mississippi, and thus had taken advantage of the laws of Mississippi and the protections afforded under such laws. Alpaugh v. Moore, 568 So. 2d 291, 1990 Miss. LEXIS 606 (Miss. 1990).

A court had personal jurisdiction over a former Mississippi resident in an action brought by his former wife who alleged that she incurred $5,000 in debts by reason of his desertion, where the allegations included a debt incurred in Mississippi by reason of the former husband's conduct in Mississippi. Petters v. Petters, 560 So. 2d 722, 1990 Miss. LEXIS 201 (Miss. 1990).

By virtue of the supremacy clause, the Federal Uniformed Services Former Spouses' Protection Act overrides Mississippi's long-arm statutes to the extent that Mississippi law would exceed the limitations of the federal enactment. Thus, a former husband's absence from Mississippi for 15 continuous years precluded personal jurisdiction by reason of residence or domicile since the language of the federal Act makes it clear that only current domicile or residence may suffice to confer authority upon a court to adjudge rights in a former service person's military retirement pension. Petters v. Petters, 560 So. 2d 722, 1990 Miss. LEXIS 201 (Miss. 1990).

Mississippi long-arm statute could not bring owners of trucking company located and primarily doing business in Nevada and Colorado into court in Mississippi where only contacts between defendants and Mississippi were permit to carry property through the state and purchase of operating authorities permitting shipment into Mississippi. Cycles, Ltd. v. W.J. Digby, Inc., 889 F.2d 612, 1989 U.S. App. LEXIS 18373 (5th Cir. Miss. 1989).

The "doing-business" provision of Mississippi's long-arm statute may not be used by nonresident plaintiffs to bring nonresident defendants into court in the state; even residents must establish a nexus between plaintiff's cause of action and defendant's in-state business contacts to use such long-arm provision. Mills v. Dieco, Inc., 722 F. Supp. 296, 1989 U.S. Dist. LEXIS 12349 (N.D. Miss. 1989).

Section 13-3-57 requires no direct nexus to the non-resident's business done in Mississippi, but requires only that the claim be incident thereto. The statute thus requires far less than that the liability generating conduct have occurred in Mississippi. There is no constitutional imperative that the action arise out of the non-resident defendant's contacts/activities in this state. All that is required is that the non-resident defendant have continuous and systematic general contacts with Mississippi. These contacts must amount to something more than occasional "fortuitous" instances where the defendant had in the past come into some casual, isolated contact with an in-state resident. McDaniel v. Ritter, 556 So. 2d 303, 1989 Miss. LEXIS 501 (Miss. 1989).

An airline passenger's personal representatives' claim against the estate of an airline pilot arose out of facts sufficiently incident to business done by the pilot in Mississippi that the pilot's estate was amenable to suit in Mississippi under

§ 13-3-57 where the pilot and the passenger were employees of a Mississippi corporation which had an office in Mississippi, and the airplane crash which gave rise to the passenger's claim occurred during a trip made on behalf of the corporation. McDaniel v. Ritter, 556 So. 2d 303, 1989 Miss. LEXIS 501 (Miss. 1989).

The use of the word "representative" in § 13-3-57 encompasses executors and administrators of an estate and contemplates that the actions of a decedent during his or her lifetime which would have rendered him or her amenable to suit will similarly subject his or her administrator or executor (i.e. his or her personal "representative") to in personam jurisdiction in Mississippi. McDaniel v. Ritter, 556 So. 2d 303, 1989 Miss. LEXIS 501 (Miss. 1989).

Writers of book "published" or "communicated" allegedly defamatory writing to publisher, which republished book on widespread basis, and therefore writers are subject to in personam jurisdiction by virtue of fact that they committed tort within state. Mitchell v. Random House, Inc., 703 F. Supp. 1250, 1988 U.S. Dist. LEXIS 15738 (S.D. Miss. 1988), aff'd, 865 F.2d 664, 1989 U.S. App. LEXIS 1670 (5th Cir. Miss. 1989).

Negotiations conducted telephonically and through use of mails by out of state business do not evidence "purposeful availment" of benefits of forum state so as to permit in personam jurisdiction over business, where no representative of business ever visited state during negotiation process or at anytime, and where contract in question calls for performance and interpretation of contract under Pennsylvania law. General Equipment Mfrs. v. Coco Bros., Inc., 702 F. Supp. 608, 1988 U.S. Dist. LEXIS 15313 (S.D. Miss. 1988).

When nonresident defendant moves to dismiss for lack of personal jurisdiction, plaintiffs need not make full showing on merits that jurisdiction is proper, but must make prima facie showing of facts upon which in personam jurisdiction is predicated; plaintiffs failed to come forward with proof in acceptable form to controvert defendant's unrebutted affidavit, which conclusively established that defendant was not doing business and had never done business in Mississippi. Strong v. RG Industries, Inc., 691 F. Supp. 1017, 1988 U.S. Dist. LEXIS 9037 (S.D. Miss. 1988).

Jurisdiction under Mississippi Long-Arm statute based on contract with nonresident to be performed in whole or in part in Mississippi does not apply where patient alleging medical malpractice for acts that had taken place in Tennessee had not identified any act that she, doctor, or professional corporation had performed, or were to be performed, in Mississippi, pursuant to either explicit or implicit contract. Rittenhouse v. Mabry, 832 F.2d 1380, 1987 U.S. App. LEXIS 15605 (5th Cir. Miss. 1987), but see, Gross v. Chevrolet Country, 655 So. 2d 873, 1995 Miss. LEXIS 226 (Miss. 1995), cert. denied, 516 U.S. 1094, 116 S. Ct. 817, 133 L. Ed. 2d 761, 1996 U.S. LEXIS 776 (U.S. 1996).

Physician and professional corporation were not amenable to jurisdiction under tort prong of long-arm statute because act of alleged negligence was committed and completed in Tennessee. Rittenhouse v. Mabry, 832 F.2d 1380, 1987 U.S. App. LEXIS 15605 (5th Cir. Miss. 1987), but see, Gross v. Chevrolet Country, 655 So. 2d 873, 1995 Miss. LEXIS 226 (Miss. 1995), cert. denied, 516 U.S. 1094, 116 S. Ct. 817, 133 L. Ed. 2d 761, 1996 U.S. LEXIS 776 (U.S. 1996).

Non-resident defendant who initiated contractual relationship out of which litigation arose with resident plaintiff, was subject to exercise of personal jurisdiction of court pursuant to Miss Code § 13-3-57 where language of contract itself and defendant's subsequent correspondence with plaintiff clearly reflected defendant's intent and understanding that critical and meaningful work in furtherance of contract was to be performed, and in fact was performed, in Mississippi. Owen v. Woods, 661 F. Supp. 15, 1986 U.S. Dist. LEXIS 16354 (S.D. Miss. 1986).

Individual defendants' motions for dismissal are properly denied, where motions are apparently based on plaintiff's failure to specifically designate in both his original and his first amended complaints the provision of § 13-3-57 upon which jurisdiction is based, where plaintiff's second amended complaint, filed subsequent to defendants' motions, premises long-arm jurisdiction on tort prong of statute, and where plaintiff has sufficiently alleged tortious acts committed in whole or in part in Mississippi to support long-arm jurisdiction against individual defendants in their individual capacities. White v. Franklin, 637 F. Supp. 601, 1986 U.S. Dist. LEXIS 25121 (N.D. Miss. 1986).

Tests for determining whether foreign corporation is "doing business" includes purposeful commission of act which consummates in transaction in Mississippi with cause of action arising from or being connected with such acts or transactions and consistency of assumption of personal jurisdiction with traditional notions of fair play and substantial justice; foreign corporation's mailing of royalty checks to Mississippi residents for oil and gas production of out of state properties is not sufficient for jurisdictional purposes; execution of employment contracts and power of attorney in foreign state concerning administration of estate located in foreign state does not support Mississippi jurisdiction over claim by Mississippi law firm concerning work performed in Alabama for Alabama residents. Martin & Martin v. Jones, 616 F. Supp. 339, 1985 U.S. Dist. LEXIS 17567 (S.D. Miss. 1985).

Sections 13-3-57 and 79-1-27[Repealed] must be harmonized to support state's valid policy of opening doors of Mississippi courts to foreign corporations found doing business in state to sue and be sued from all bona fide causes of action; merely doing business in Mississippi is not sufficient to support exercise of personal jurisdiction, and business in Mississippi of non-resident defendant must be of systematic and ongoing nature, cause of action must be incident to business activity, and assertion of jurisdiction must not offend notions of fairness and substantial justice; busline which does not maintain ticket agents, representatives, employees, offices, or property in Mississippi and which does not advertise or solicit business or negotiate or execute contracts in Mississippi but whose charter service has merely passed through state is not subject to jurisdiction for cause of action which does not arise out of activities of busline in state. Allen v. Jefferson Lines, Inc., 610 F. Supp. 236, 1985 U.S. Dist. LEXIS 19139 (S.D. Miss. 1985).

Despite fact that none of the plaintiffs in wrongful death action is resident of Mississippi, long-arm statute is available to plaintiffs where decedents, in whose shoes plaintiffs stand, were residents of Mississippi. Thompson v. Chrysler Motors Corp., 755 F.2d 1162, 1985 U.S. App. LEXIS 28452 (5th Cir. Miss. 1985).

If plaintiffs in wrongful death action amend pleadings to specifically allege that automobile accident giving rise to suit was caused by defect in master cylinder, plaintiffs will have satisfied minimum contacts test for determining whether personal jurisdiction over defendant satisfies federal due process requirements, where, although vehicle in question was sold and delivered by defendant dealer, who is Alabama Corporation, to decedents in Alabama, dealer aided Mississippi dealership in latter's attempt to repair brakes by selling and shipping master cylinder to Mississippi dealership. Thompson v. Chrysler Motors Corp., 755 F.2d 1162, 1985 U.S. App. LEXIS 28452 (5th Cir. Miss. 1985).

Provision of § 13-3-57 giving Mississippi courts jurisdiction over nonresident who commits tort in whole or in part in Mississippi potentially confers jurisdiction over Alabama car dealership in action arising from Mississippi automobile accident notwithstanding that dealer sold car involved in accident to decedent in Alabama, since tort is not complete until injury occurs and thus at least part of tort allegedly committed by dealer was committed in Mississippi. Thompson v. Chrysler Motors Corp., 755 F.2d 1162, 1985 U.S. App. LEXIS 28452 (5th Cir. Miss. 1985).

Subjecting Alabama car dealership to jurisdiction of Mississippi court in wrongful death action arising from automobile accident occurring in Mississippi but allegedly resulting from dealer's sale and shipment to Mississippi dealership of master cylinder for use in attempting to repair vehicle's brakes would not offend traditional notions of fair play and substantial justice so as to violate federal due process requirements, where (1) most of witnesses reside in Mississippi, (2) two or three defendants reside in Mississippi, (3) only Mississippi court can resolve matter in single action, and (4) Alabama dealer is not inconvenienced unreasonably since distance between Alabama and Mississippi is not great; moreover, Mississippi has exceptionally strong interest in providing forum for redress of injuries to its residents occurring within its borders and caused by allegedly defective product shipped from outside state. Thompson v. Chrysler Motors Corp., 755 F.2d 1162, 1985 U.S. App. LEXIS 28452 (5th Cir. Miss. 1985).

Tripartite test, under which applicability of long-arm statute is determined on basis of whether nonresident defendant has purposefully done act or consummated transaction in forum state, whether cause of action has arisen from or is connected with such act of transaction, and whether assumption of jurisdiction by forum state offends traditional notions of fair play and substantial justice, applies only to "doing business" category of statute. Thompson v. Chrysler Motors Corp., 755 F.2d 1162, 1985 U.S. App. LEXIS 28452 (5th Cir. Miss. 1985).

1980 amendment to § 13-3-57 allowing nonresident plaintiff to obtain service of process upon nonresident defendant who has committed tort in whole or in part in Mississippi against nonresident plaintiff applies so as to permit nonresident plaintiff injured in automobile accident to obtain service upon Alabama car dealership to extent that dealership is subject to in personam jurisdiction of Mississippi Court where accident occurred after effective date of amendment. Thompson v. Chrysler Motors Corp., 755 F.2d 1162, 1985 U.S. App. LEXIS 28452 (5th Cir. Miss. 1985).

Where a New York resident brought an action against a nonresident for alienation of affection and criminal conversation with his wife, and where the complaint contained sufficient allegations that the defendant committed a tort at least in part within Mississippi, the trial court had in personam jurisdiction over defendant by virtue of § 13-3-57. Camp v. Roberts, 462 So. 2d 726, 1985 Miss. LEXIS 1858 (Miss. 1985).

Mississippi Code § 79-1-27[Repealed], providing that any corporation doing business in Mississippi is subject to suit there, must be construed and harmonized with § 13-3-57 "doing business" clause, which cannot be used by non-resident plaintiff; to extend jurisdiction over nonresident corporation in suit by non-resident plaintiff on authority of § 79-1-27[Repealed] would be contrary to intention of Mississippi legislature. Smith v. De Walt Products Corp., 743 F.2d 277, 1984 U.S. App. LEXIS 17911 (5th Cir. Miss. 1984).

Plaintiff in products liability action against Pennsylvania corporation cannot avoid requirements of Mississippi long-arm statute on ground that "equality of treatment" requires that Pennsylvania corporation, which would not be precluded from bringing suit in Mississippi, should also be subject to suit in Mississippi as defendant. Smith v. De Walt Products Corp., 743 F.2d 277, 1984 U.S. App. LEXIS 17911 (5th Cir. Miss. 1984).

"Doing-business" provision of § 13-3-57 is not available to non-resident plaintiffs. Smith v. De Walt Products Corp., 743 F.2d 277, 1984 U.S. App. LEXIS 17911 (5th Cir. Miss. 1984).

Nonresident plaintiff who serves process on registered agent of nonresident defendant, qualified to do business in Mississippi, acquires in personam jurisdiction over defendant, even though cause of action arose outside of Mississippi. Herrley v. Volkswagen of America, Inc., 598 F. Supp. 690, 1984 U.S. Dist. LEXIS 21686 (S.D. Miss. 1984), aff'd, 957 F.2d 216, 1992 U.S. App. LEXIS 6167 (5th Cir. Miss. 1992).

Mississippi long-arm statute applies in product liability action against foreign corporation where Mississippi resident employed as truckdriver died in Mississippi as result of accident caused by defective design and manufacture of hauler-container being transported by deceased at time of accident. Cannon v. Tokyu Car Corp., 580 F. Supp. 1451, 1984 U.S. Dist. LEXIS 19082 (S.D. Miss. 1984).

In a diversity action one long-distance telephone call that was alleged to constitute a tort committed "in whole or in part" in Mississippi was a proper basis on which to predicate federal diversity jurisdiction under Code § 13-3-57, since the statute includes in its reach defendants who commit a single tort, an alleged tortfeasor need not have been present in the state, and if the alleged tortfeasor causes injury in Mississippi he is covered by the statute. Brown v. Flowers Industries, Inc., 688 F.2d 328, 1982 U.S. App. LEXIS 25419 (5th Cir. Miss. 1982), cert. denied, 460 U.S. 1023, 103 S. Ct. 1275, 75 L. Ed. 2d 496, 1983 U.S. LEXIS 4089 (U.S. 1983).

Service of process in an action for personal injuries sustained in an automobile accident was improperly made pursuant to § 13-3-57, where although the plaintiff was a Mississippi resident when the accident occurred, she was not a resident when suit was filed and, at that time, the Mississippi statute could be used against nonresident defendants only by a plaintiff who was a resident when the suit was filed. Golden v. Cox Furniture Mfg. Co., 683 F.2d 115, 1982 U.S. App. LEXIS 17055 (5th Cir. Miss. 1982).

The 1980 amendment to § 13-3-57 merely creates a right in nonresidents to make use of the statute where the tort is committed in whole or in part in the state; otherwise the statute remains the same and the amendment strengthens the view that a nonresident may not use the statute as a vehicle to bring suit in the courts of the state against nonresidents or foreign corporations not qualified under the constitution or state law to do business in the state when incidents giving rise to the cause of action occur outside of Mississippi. Thompson v. F. W. Woolworth Co., 508 F. Supp. 522, 1981 U.S. Dist. LEXIS 10531 (N.D. Miss. 1981).

In an action arising out of the sale of a grinding machine, service of summons on the nonresident defendants pursuant to the state long-arm statute was improper, notwithstanding plaintiff buyers' allegations that defendants, the company's owner and sales director, had committed a tort in part in Mississippi against a resident and that the owner had also made a contract to be performed by a party in Mississippi, where the sales had been made through a Tennessee corporation doing business in Tennessee, where the contacts leading up to the sales at issue had been made in Tennessee, and where the transactions had been closed in that state and the machines delivered to plaintiffs at their place of business in Tennessee; thus, the court did not possess in personam jurisdiction over defendants. Blanton v. American Tool & Grinding Co., 472 F. Supp. 257, 1979 U.S. Dist. LEXIS 12938 (N.D. Miss. 1979).

In an action against a nonresident corporate landowner for personal injuries sustained by plaintiff's minor child in the waters surrounding defendant's land, the trial court committed reversible error in sustaining a motion to dismiss for lack of in personam jurisdiction where allegations of negligence and of knowledge of a dangerous condition in such waters were sufficient for the trial court to acquire jurisdiction under the long-arm statute. Mandel v. James Graham Brown Foundation, Inc., 375 So. 2d 1017, 1979 Miss. LEXIS 2444 (Miss. 1979).

If a plaintiff can obtain process on a non-resident defendant, in a suit filed under the long arm statute, he will not be excused for his failure to sue and will not be entitled to claim that the statute of limitations is tolled during the absence of the defendant from the state; if a plaintiff makes such a claim, the burden is on him to show the duration of the defendant's absence from the state and to show that defendant cannot be served with process under any of the ways provided by the long arm statute. Gulf Nat'l Bank v. King, 362 So. 2d 1253, 1978 Miss. LEXIS 2162 (Miss. 1978).

The application of the long-arm statute did not deny defendants due process of law where, inter alia, the execution of the contract at issue occurred largely in Mississippi, following telephone negotiations initiated in the state, and where defendant partially performed its part of the contract in Mississippi. Sheridan, Inc. v. C. K. Marshall & Co., 360 So. 2d 1223, 1978 Miss. LEXIS 2322 (Miss. 1978).

In an action to collect an amount allegedly due on a sale of products manufactured in Mississippi and sold to a Maine buyer on open account, the court lacked in personam jurisdiction over defendant buyer where the sale of the system at issue, for use on an egg farm, had been negotiated by telephone and correspondence, where defendant had not been present in Mississippi at any time and where he had no other business connections in the state; the only fact that could arguably justify in personam jurisdiction was that the system had been fabricated in Mississippi according to plans and specifications especially prepared in the state by plaintiff, but this activity was performed by plaintiff in order to place itself in a position to make the sale to its Maine customer. Reed-Joseph Co. v. De Coster, 461 F. Supp. 748, 1978 U.S. Dist. LEXIS 16847 (N.D. Miss. 1978).

In an action arising when a Tennessee auctioneer sold certain livestock over which the Mississippi plaintiff had a security interest, defendant's motion to dismiss for lack of in personam jurisdiction would be granted, in accordance with the state long arm statute, where the contract between defendant and the plaintiff's debtor was wholly performed in Tennessee and where, if treated as a tort action, the action in its entirety occurred in Tennessee; although defendant's contacts with the state would satisfy the mandate of due process, the presence of one representative within the state and the act of advertising within the state would not constitute doing business within the meaning of the statute where there was no causal relationship between the cause of action alleged and the activities of the defendant within the forum state. Indianola Production Credit Asso. v. Burnette-Carter Co., 450 F. Supp. 303, 1977 U.S. Dist. LEXIS 12823 (N.D. Miss. 1977).

Defendants' motion to dismiss for lack of personal jurisdiction would be granted where, according to their uncontradicted affidavits, neither defendant was qualified to do business, was doing business, or had ever done business in the state, where neither had committed a tort in the state, and where neither had entered into a contract with a resident of the state to be performed in whole or in part in the state. Haire v. Miller, 447 F. Supp. 57, 1977 U.S. Dist. LEXIS 13680 (N.D. Miss. 1977).

In an action for breach of contract brought by a New York corporation qualified to do and doing business in Mississippi against a Belgian corporation not otherwise connected with the state, in personam jurisdiction would be exercised pursuant to the long-arm statute and in accordance with the requirements of due process where the contract was partly performed in the state. Chromcraft Corp. v. Mirox, S. A., 446 F. Supp. 342, 1977 U.S. Dist. LEXIS 14242 (N.D. Miss. 1977).

A Louisiana shipping corporation was subject to personal jurisdiction in Mississippi in an action for breach of contract where, inter alia, the shipper either loaded or unloaded petroleum products at a port in Mississippi on 8 different occasions and where it submitted reports concerning the movement of petroleum products to proper state officials. Smego Marine Transport, Inc. v. International Trading & Transport, Ltd., 446 F. Supp. 21, 1977 U.S. Dist. LEXIS 14966 (N.D. Miss. 1977).

In personam jurisdiction over a third-party nonresident defendant was not available under the long-arm statute in an action concerning certain defective goods which it shipped to a Mississippi retailer and which were, in turn, delivered to a Mississippi buyer where the nonresident's only contact with the state consisted of the isolated acts of receiving a telephone call and supplying goods from a point outside Mississippi; the exercise of personal jurisdiction under such circumstances would also be a violation of due process. R. Clinton Constr. Co. v. Bryant & Reaves, Inc., 442 F. Supp. 838, 1977 U.S. Dist. LEXIS 12222 (N.D. Miss. 1977).

Service of process under this section was available to a non-resident plaintiff in an action against a non-resident corporate defendant arising from an injury arising in Mississippi. Daniels v. McDonough Power Equipment, Inc., 430 F. Supp. 1203, 1977 U.S. Dist. LEXIS 16159 (S.D. Miss. 1977).

In an action against a foreign corporation alleging that the corporation interfered in a business relationship between its Mississippi subsidiary and a Mississippi resident, a foreign merger agreement involving the subsidiary was not a contract with a Mississippi resident within the meaning of this section; The corporation's exercise of its legitimate business interest in selling its subsidiary did not constitute a tort against a Mississippi resident within the meaning of this section; The corporation was not doing business in Mississippi within the meaning of this section, even though its Mississippi subsidiary was wholly owned, the subsidiary's financing had to be obtained through the corporation, the subsidiary's long range plans were submitted to the corporation for approval, the boards of directors of the two corporations were nearly identical and board meetings of the subsidiary were held at the corporate offices of the corporation, where the formal legal requirements dividing the two corporations were scrupulously observed, where the subsidiary was recognized as a corporate entity legally distinct from its parent, where the subsidiary was adequately financed, where the subsidiary paid all of the salaries of its employees and its own expenses, including payment for services rendered by its parent, where there was no commingling of funds, and where the subsidiary maintained its own books, records, and a balance sheet. Johnson v. Warnaco, Inc., 426 F. Supp. 44, 1976 U.S. Dist. LEXIS 13363 (S.D. Miss. 1976).

Nonresident limited partners of a nonresident limited partnership doing business in the state could not be made subject to jurisdiction of the state's courts in an action against the partnership where they had done none of the acts specified by the long arm statute (§ 13-3-57) as prerequisites to jurisdiction, and had paid their indebtedness to the partnership in full, thus, under the statute governing circumstances in which limited partners are proper parties to a suit against the partnership (§§ 79-13-3, 79-13-51), not being subject to being made parties. Ga-Pak Lumber Co. v. Nalley, 337 So. 2d 1270, 1976 Miss. LEXIS 1615 (Miss. 1976).

Where the notice of service of a nonresident corporation was delivered to the president of the corporation in accord with statutory requirements, and an interlocutory default judgment was entered upon failure of the defendant to answer, the default judgment could not be set aside on the grounds that the president of the corporation mislaid the notice due to anxiety over his wife's recent death. Western Chain Co. v. Brownlee, 317 So. 2d 418, 1975 Miss. LEXIS 1758 (Miss. 1975).

Where the consideration for a contract was the agreement between the plaintiff and the nonresident defendant to cause a merger of Mississippi and Arkansas corporations, which would require a partial performance of the contract by both plaintiff and defendant in Mississippi, the defendant was within the reach of this statute. Pierce v. Alleluia Cushion Co., 397 F. Supp. 338, 1975 U.S. Dist. LEXIS 11329 (N.D. Miss. 1975).

The Mississippi long-arm statute could be utilized in an action for the wrongful death, pursuant to Code 1972, § 11-7-13, of a nonresident decedent, where the plaintiff was a Mississippi resident suing as administrator of the decedent's estate pursuant to letters of administration granted by a Mississippi chancery court. McAlpin v. James McKoane Enterprises, Inc., 395 F. Supp. 937, 1975 U.S. Dist. LEXIS 12161 (N.D. Miss. 1975), disapproved, Estate of Portnoy v. Cessna Aircraft Co., 730 F.2d 286, 1984 U.S. App. LEXIS 23318 (5th Cir. Miss. 1984).

This statute (formerly § 1437, Mississippi Code (1942)) does not require the attachment of the complaint to the summons. Western Chain Co. v. American Mut. Liability Ins. Co., 527 F.2d 986, 1975 U.S. App. LEXIS 11213 (7th Cir. Ill. 1975).

Where the Associated Press sent a dispatch from Louisiana to its Mississippi members incorrectly indicating that plaintiff, a Mississippi resident, had been convicted of marijuana possession, the district court had jurisdiction of plaintiff's libel action under the terms of the amended Mississippi long-arm statute; the AP's contacts with Mississippi were sufficient to justify, under the due process clause, Mississippi's exercise of its jurisdiction. Edwards v. Associated Press, 512 F.2d 258, 1975 U.S. App. LEXIS 14945 (5th Cir. Miss. 1975).

A nonresident executor administering an estate in and under the supervision of the Tennessee courts, whose only contact with Mississippi touching upon the court administration of the estate had been the probation of the foreign will and the recording of a certified copy of the record of his appointment and qualification in Tennessee, had such minimal and tenuous contact with Mississippi as to be outside the coverage of this section [Code 1972, § 13-3-57]. Riley v. Communications Consultants, Inc., 385 F. Supp. 296, 1974 U.S. Dist. LEXIS 11784 (N.D. Miss. 1974).

The long-arm statute was clearly enacted for the benefit of residents only, and it has not been expanded through the process of judicial interpretation to include nonresident plaintiffs not qualified to do business within the state; there is no defect under federal constitutional standards for limiting the long-arm statute to resident plaintiffs, since the state is not obligated to make its courts available to nonresidents, who themselves are not doing business in the state, to sue other nonresidents. American International Pictures, Inc. v. Morgan, 371 F. Supp. 528, 1974 U.S. Dist. LEXIS 12866 (N.D. Miss. 1974).

Process served pursuant to § 13-3-57 is not valid or effective to subject the nonresident defendant to in personam jurisdiction unless the cause of action arises from, or is connected with, the consummation of some transaction or performance of some act within the state by such nonresident defendant. Holvitz v. Norfleet--Ashley, Inc., 369 F. Supp. 394, 1973 U.S. Dist. LEXIS 10631 (N.D. Miss. 1973).

Code 1942, § 1437 could not be used to sustain in personam jurisdiction over individual defendants on grounds that the activities of the individual defendants in connection with the contract performed, or to be performed in Mississippi by the defendant corporation, created a situation under which this section would reach the individual defendants' in personam jurisdiction, since jurisdiction over individual officers and employees of a corporation cannot be predicated merely upon the jurisdiction over the corporation itself. Webb v. Culberson, Heller & Norton, Inc., 357 F. Supp. 923, 1973 U.S. Dist. LEXIS 13866 (N.D. Miss. 1973).

A "single contract" is sufficient to confer jurisdiction of a nonresident under Code 1942, § 1437. Kaydee Metal Products Corp. v. Sintex Machine Tool Mfg. Corp., 342 F. Supp. 902, 1972 U.S. Dist. LEXIS 13806 (N.D. Miss. 1972).

An administratrix, residing outside and being a nonresident of the state of Mississippi has, by her actions in administering an estate in Mississippi, subjected herself to process under Code 1942, § 1437, on a cause of action arising out of an automobile accident which occurred in Alabama. Galloway v. Korcekwa, 339 F. Supp. 801, 1972 U.S. Dist. LEXIS 14938 (N.D. Miss. 1972).

The statutory purpose is to afford to Mississippi residents a right of action locally against the nonresident who commits a tort, in whole or in part, in this state against a resident of this state, and to limit the reach of this section [Code 1942, § 1437] and products liability cases "to injuries in this state" unduly restricts the clear meaning of the statute. Breedlove v. Beech Aircraft Corp., 334 F. Supp. 1361, 1971 U.S. Dist. LEXIS 11662 (N.D. Miss. 1971).

There is no statutory requirement that the part of the tort which causes the injury be committed in Mississippi; the words require only that a part of the tort be committed in this state. Breedlove v. Beech Aircraft Corp., 334 F. Supp. 1361, 1971 U.S. Dist. LEXIS 11662 (N.D. Miss. 1971).

Through the enactment of Code 1942, § 1438, actions brought pursuant to this section [Code 1942, § 1437] shall be issued and served in the same manner and with the same effect as process issued and served pursuant to Code 1942, § 9352-61. McKnight v. Dyer, 331 F. Supp. 343, 1971 U.S. Dist. LEXIS 12274 (N.D. Miss. 1971).

Under Code 1942, § 1438, providing that service of process made upon the secretary of state shall be made in the same manner and by the same procedure and with the same force and effect as is provided by the nonresident motorist statute as amended and supplemented, service can be made pursuant to a subsequently inserted provision of the nonresident motorist statute, Code 1942, § 9352-61, so as to permit service upon any person who is a nonresident at the time the action is filed, even though at the time of the incident giving rise to the action, such person was a resident of Mississippi. McKnight v. Dyer, 331 F. Supp. 343, 1971 U.S. Dist. LEXIS 12274 (N.D. Miss. 1971).

In a malpractice action against a nonresident doctor who resided in Mississippi at the time of the alleged tort, the court held that the addition in this section

[Code 1942, § 1438] of the words "as amended and supplemented" indicate that the legislature intended to give those suing nonresidents under Code 1942, § 1437 the same rights to service and effect of process as are given to those suing nonresident motorists under Code 1942, § 9352-61. McKnight v. Dyer, 331 F. Supp. 343, 1971 U.S. Dist. LEXIS 12274 (N.D. Miss. 1971).

It is well settled that the Mississippi "long arm" statute applies to individual as well as to corporate defendants. Alford v. Whitsel, 322 F. Supp. 358, 1971 U.S. Dist. LEXIS 14729 (N.D. Miss. 1971).

For amenability of a nonresident individual defendant to process served pursuant to the Mississippi "long arm" statute, the nonresident must purposefully do some act or consummate some transaction in Mississippi, the cause of action must arise from or be connected with such act or transaction, and the assumption of jurisdiction by the state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in Mississippi, the relative convenience of the parties, the benefits and protection of the laws of the state afforded the respective parties, and the basic equities of the situation. Alford v. Whitsel, 322 F. Supp. 358, 1971 U.S. Dist. LEXIS 14729 (N.D. Miss. 1971).

The personal appearance of the defendant before a Mississippi grand jury, and his alleged malicious and willful withholding of facts which would have exonerated the plaintiff, a Mississippi resident, from criminal charges relating to a check given the defendant by the plaintiff, constituted the commission of a tort within Mississippi against a resident of the state, within the meaning of the Mississippi "long arm" statute. Alford v. Whitsel, 322 F. Supp. 358, 1971 U.S. Dist. LEXIS 14729 (N.D. Miss. 1971).

In applying the so-called long-arm statute the courts should be sensitive to any conflict between the letter of the law and traditional notions of fair play and substantial justice, and if the latter is offended, the former may have to yield. Beacham v. Beacham, 243 So. 2d 62, 1971 Miss. LEXIS 1505 (Miss. 1971).

Where a nonresident corporation signed a sales representative agreement with a resident of Mississippi, which resident fully performed the contract in the state by making sales of the corporation's products and furnishing other information to the corporation as well as supervising the installation of the product, which installation required representatives of the corporation to make numerous trips to the facility site to assist in the installation, the corporation was amenable to the process and jurisdiction of the courts of Mississippi in a suit by the Mississippi resident to recover commissions allegedly due under the agreement. Beacham v. Beacham, 243 So. 2d 62, 1971 Miss. LEXIS 1505 (Miss. 1971).

In a suit to recover commissions allegedly due under a sales representative agreement between the plaintiff and the defendant, a nonresident corporate manufacturer, where the defendant made a special appearance and moved for dismissal of the suit on the ground that it was not subject to process of the court, which motion was overruled, the corporate defendant's action in answering the bill of complaint and in participating in defending the suit did not estop it from making a further attack on the court's jurisdiction on appeal. Beacham v. Beacham, 243 So. 2d 62, 1971 Miss. LEXIS 1505 (Miss. 1971).

The Mississippi statutes providing for the method of service on a resident or a qualified foreign corporation, the "doing business" statute, and the statute providing for substituted service on any corporation doing business in the state, must be read together, and such reading leads to the inescapable conclusion that effective process under these statutes presupposes a factual determination that the foreign corporation is doing business in the state of Mississippi. Hyde Constr. Co. v. Koehring Co., 321 F. Supp. 1193, 1969 U.S. Dist. LEXIS 13680 (D. Miss. 1969).

A foreign corporation qualified to do business in Mississippi is a resident within the meaning of subd (a) of this section [Code 1942, § 1437] so that it may bring a suit under the terms of the section. C. H. Leavell & Co. v. Doster, 211 So. 2d 813, 1968 Miss. LEXIS 1276 (Miss. 1968).

Nonresident plaintiff corporations qualified to do business in Mississippi are residents of the state within the meaning of the first category mentioned in subd (a) of this section [Code 1942, § 1437]. C. H. Leavell & Co. v. Doster, 211 So. 2d 813, 1968 Miss. LEXIS 1276 (Miss. 1968).

A foreign corporation qualified to do business under the laws of Mississippi should have the same privileges and advantages of invoking the aid of the courts of this state under this section [Code 1942, § 1437] as resident corporations if they are to have equal protection of the laws. C. H. Leavell & Co. v. Doster, 211 So. 2d 813, 1968 Miss. LEXIS 1276 (Miss. 1968).

A foreign corporation qualified to do business in Mississippi may not be sued under the terms of this section [Code 1942, § 1437] because a foreign corporation, to be reached by the section, must not be qualified as doing business in the state. C. H. Leavell & Co. v. Doster, 211 So. 2d 813, 1968 Miss. LEXIS 1276 (Miss. 1968).

It is now settled that there is little reason to distinguish between nonresident individuals and foreign corporations with respect to obtaining jurisdiction over them under this section [Code 1942, § 1437]. Smith v. Barker, 306 F. Supp. 1173, 1968 U.S. Dist. LEXIS 7727 (N.D. Miss. 1968).

The "long arm" amendment to this section [Code 1942, § 1437] which became effective July 1, 1964 does not apply retrospectively to torts committed prior to its effective date. Mladinich v. Kohn, 186 So. 2d 481, 1966 Miss. LEXIS 1321 (Miss. 1966).

The three basic factors which must coincide if jurisdiction is to be entertained by courts of this state over nonresident individuals and foreign corporations are (1) the nonresident defendant or foreign corporation must purposely do some act or consummate some transaction in the state, (2) the cause of action must arise from, or be connected with, such act or transaction, and (3) the assumption of jurisdiction by the state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature and extent of activity in this state, the relative convenience of the parties, the benefits and protection of the laws of this state afforded the respective parties, and the basic equities of the situation. Mladinich v. Kohn, 250 Miss. 138, 164 So. 2d 785, 1964 Miss. LEXIS 451 (Miss. 1964); Republic-Transcon Industries, Inc. v. Templeton, 253 Miss. 132, 175 So. 2d 185, 1965 Miss. LEXIS 975 (Miss. 1965); Breckenridge v. Time, Inc., 253 Miss. 835, 179 So. 2d 781, 1965 Miss. LEXIS 1059 (Miss. 1965).

This is a remedial statute to be liberally construed and applied without enlarging upon its provisions. Mississippi Chemical Corp. v. Vulcan-Cincinnati, Inc., 224 F. Supp. 11, 1963 U.S. Dist. LEXIS 6402 (S.D. Miss. 1963), aff'd, 338 F.2d 662, 1964 U.S. App. LEXIS 3743 (5th Cir. Miss. 1964).

In the absence of motion attacking the service of process under this section [Code 1942, § 1438], the court, although informed that the secretary of state had failed to mail a copy of the summons to defendant, may properly proceed with the trial. Aerial Agricultural Service v. Richard, 264 F.2d 341, 1959 U.S. App. LEXIS 4250 (5th Cir. Miss. 1959).

While the statute forbidding access by foreign corporations to the courts of the state because of their failure to comply with statutory provisions for doing business is strictly construed so that exclusion from access to the courts of the state requires a strong showing that the statute has been violated, the statute providing for services on a designated agent where, without a compliance with the statute, a corporation has undertaken to do business in state is liberally construed since otherwise citizens of a state would be forced to resort to another jurisdiction in order to maintain suits against foreign corporations as to matters arising out of transactions had within the statute. Mississippi Wood Preserving Co. v. Rothschild, 201 F.2d 233, 1953 U.S. App. LEXIS 2290 (5th Cir. Miss. 1953).

This section [Code 1942, §§ 1437, 1438] applies to contract, as well as to tort actions, growing out of business or acts done within the state. Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 1951 Miss. LEXIS 322 (Miss. 1951).

Change of status of defendant from that of resident of this state at time of entering into contract on which suit is brought to that of nonresident at time suit is filed does not affect validity of service of process under this section [Code 1942, § 1438] when defendant is still engaged in same business within state. Condon v. Snipes, 205 Miss. 306, 38 So. 2d 752, 1949 Miss. LEXIS 433 (Miss. 1949).

This statute is to be given a prospective rather than a retrospective operation and therefore does not apply to an action arising out of an automobile accident occurring prior to its enactment. Bouchillon v. Jordan, 40 F. Supp. 354, 1941 U.S. Dist. LEXIS 2937 (D. Miss. 1941).

3. What constitutes doing business within state.

Trial court erred in granting a limited liability company's (LLC) motion to dismiss due to lack of personal jurisdiction because it was "doing business" within the State under the long-arm statute; the LLC collaborated with a corporation about creating a sports-training facility in the State, communicated and planned furthering its formation, participated in meetings in the State, substantially participated in the creation of a Mississippi company, and became members of that company. Joshua Props., LLC v. D1 Sports Holdings, LLC, 130 So. 3d 1089, 2014 Miss. LEXIS 70 (Miss. 2014).

Personal jurisdiction over a parent corporation of an extended care facility was lacking under Miss. Code Ann. § 13-3-57 in an action alleging negligence in the facility's care of a decedent, since there was no showing of sufficient domination by the parent to impute the alleged negligence of the facility to the parent; although the facility was a wholly owned subsidiary of the parent and the entities shared common officers, the parent and the facility meticulously observed corporate formalities in that they did not commingle funds, did not pool insurance coverage, and did not share financial books, records, or bank accounts, and the facility independently operated its own daily activities and paid its own operating expenses. Samples v. Vanguard Healthcare, LLC, 2008 U.S. Dist. LEXIS 70822 (N.D. Miss. Sept. 18, 2008).

Where a pharmaceutical company sought a declaratory judgment regarding patent infringement, personal jurisdiction was lacking over a laboratory under a long-arm statute, Miss. Code Ann. § 13-3-57, as the laboratory's mere plan to reintroduce a drug, which might place it into the state's stream of commerce, did not qualify as doing business there. Further, the laboratory's correspondence and license negotiations with the company did not support a finding that it was doing business in Mississippi as such would be inconsistent with due process. Cypress Pharm., Inc. v. Tiber Labs., LLC, 504 F. Supp. 2d 129, 2007 U.S. Dist. LEXIS 52454 (S.D. Miss.), transferred, 527 F. Supp. 2d 1373, 2007 U.S. Dist. LEXIS 67381 (N.D. Ga. 2007).

Mobile home moving service licensed to do business in Mississippi, which had performed some moves into or out of Mississippi over the years, was not "doing business" in the state for purposes of personal judgment in an out-of-state collision case, unrelated to any business in Mississippi. Williams v. Bud Wilson's Mobile Home Serv., 887 So. 2d 830, 2004 Miss. App. LEXIS 670 (Miss. Ct. App.), cert. denied, 888 So. 2d 1177, 2004 Miss. LEXIS 1437 (Miss. 2004).

Summary judgment granted against two corporations licensed to do business in the State of Mississippi on the grounds that the State's three-year statute of limitations did not apply to an incident that occurred in the State because the corporations were foreign corporations was reversed because the two corporations should have been considered residents for purposes of invocation of the State statute of limitations, in much the same way as the corporations would be able to invoke the use of the Mississippi long arm statute, Miss. Code Ann. § 13-3-57. St. Paul Fire & Marine Ins. Co. v. Paw Paw's Camper City, Inc., 346 F.3d 153, 2003 U.S. App. LEXIS 20081 (5th Cir. Miss. 2003).

An oral contract for goods to be manufactured in Mississippi for sale to the defendant in Florida was sufficient to support a finding that there was a contract to be performed in part in Mississippi. American Cable Corp. v. Trilogy Communs., Inc., 754 So. 2d 545, 2000 Miss. App. LEXIS 5 (Miss. Ct. App. 2000).

The parties' agreement that an oral contract existed for goods to be manufactured in Mississippi for sale to the defendant was sufficient to support a finding that there was a contract to be performed in part in Mississippi, therefore, the defendant was amenable to suit under the long-arm statute. American Cable Corp. v. Trilogy Communs., Inc., 1999 Miss. App. LEXIS 566 (Miss. Ct. App. Sept. 14, 1999), op. withdrawn, sub. op., different results reached on reh'g, 754 So. 2d 545, 2000 Miss. App. LEXIS 5 (Miss. Ct. App. 2000).

A corporation which owned drug stores in Louisiana did not do business in Mississippi so as to be subject to long arm jurisdiction since there were no substantial, continuous, and deliberate contacts with Mississippi, no purposeful availment of the Mississippi market, and no invocation of the benefits and protections of Mississippi laws, notwithstanding that the corporation paid for advertising by a separate corporation in Mississippi and ran advertisements on Louisiana television stations which broadcasted into Mississippi. Kekko v. K & B La. Corp., 716 So. 2d 682, 1998 Miss. App. LEXIS 504 (Miss. Ct. App. 1998).

In an action for alleged interference with an employment contract, a foreign defendant was not amenable to suit under the "doing business" provision of Mississippi's long-arm statute (§ 13-3-57) on the sole basis that the contract was mailed to the plaintiff at his home address in Mississippi. Peterson v. Test Int'l, E.C., 904 F. Supp. 574, 1995 U.S. Dist. LEXIS 17100 (S.D. Miss. 1995).

In a personal injury action by a Mississippi plaintiff arising from an automobile accident that occurred in Tennessee, the nonresident defendant's consummation of an agreement to breed her dog in Mississippi, and her installation of a telephone line at a friend's home in Mississippi when she briefly stayed there, were insufficient to meet the "doing business" prong of the Mississippi long arm statute (§ 13-3-57) where the Tennessee automobile accident was not incidental to the defendant's activities in Mississippi. McLaurin v. Nazar, 883 F. Supp. 112, 1995 U.S. Dist. LEXIS 5550 (N.D. Miss.), aff'd, 71 F.3d 878, 1995 U.S. App. LEXIS 36819 (5th Cir. Miss. 1995).

Plaintiff failed to demonstrate nexus between defendant product manufacturer's activities in Mississippi and plaintiff's cause of action, as required for assertion of jurisdiction under "doing business" clause of § 13-3-57, where only allegations contained in complaint were that defendant sells products nationwide and that these products have been purchased by Mississippians. Madison v. Revlon, Inc., 789 F. Supp. 758, 1991 U.S. Dist. LEXIS 20080 (S.D. Miss. 1991).

In action by truckdriver injured when rubber strap broke as he attempted to attach it to tarp, against Ohio manufacturer of strap which sold strap to Alabama company which in turn sold it to plaintiff's employee, evidence failed to establish that manufacturer was "doing business" in Mississippi so as to bring it within personal jurisdiction under statute, where there was no evidence that manufacturer had systematic and continuous contact with Mississippi. Yates v. Turzin, 786 F. Supp. 594, 1991 U.S. Dist. LEXIS 20499 (S.D. Miss. 1991).

Federal Court in Mississippi properly exercised in personam jurisdiction over publishers of swinger magazines in action for defamation and invasion of privacy for publication of personal ad pertaining to plaintiff because such publication constituted commission of tort in the state which would be deemed to be doing business in the state. Mize v. Harvey Shapiro Enterprises, Inc., 714 F. Supp. 220, 1989 U.S. Dist. LEXIS 6078 (N.D. Miss. 1989).

The Mississippi court had personal jurisdiction over an out-of-state bank since the bank's financing of a customer's gas well operation in Mississippi was an action purposefully directed toward Mississippi. By perfecting its security interests in the customer's assets in Mississippi through filing financing statements and deeds of trust, the bank purposefully availed itself of the protection of Mississippi law. Wilkinson v. Mercantile Nat'l Bank, 529 So. 2d 616, 1988 Miss. LEXIS 335 (Miss. 1988).

Test to determine jurisdiction under "doing business" prong of long-arm statute is: (1) nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in forum state; (2) cause of action must arise from, or be connected with, such action or transaction; and (3) assumption of jurisdiction by forum state must not offend traditional notions of fair play and substantial justice, consideration being given to quality, common nature, and extent of activity in forum state, relative convenience of parties, benefits and protection of laws of forum state afforded respective parties, and basic equities of situation. Rittenhouse v. Mabry, 832 F.2d 1380, 1987 U.S. App. LEXIS 15605 (5th Cir. Miss. 1987), but see, Gross v. Chevrolet Country, 655 So. 2d 873, 1995 Miss. LEXIS 226 (Miss. 1995), cert. denied, 516 U.S. 1094, 116 S. Ct. 817, 133 L. Ed. 2d 761, 1996 U.S. LEXIS 776 (U.S. 1996).

Physician and professional corporation were not amenable to jurisdiction under doing business prong of Mississippi's Long-Arm statute because relevant facts did not satisfy tri-partite test established to determine jurisdiction. There was no evidence in record that professional corporation ever purposefully did some act or consummated some transaction in Mississippi, instead confining practice to hospitals in Memphis, and corporation did not solicit patients from Mississippi or advertise there; based on this, plaintiff had not even shown that professional corporation met first element of tri-partite test. Rittenhouse v. Mabry, 832 F.2d 1380, 1987 U.S. App. LEXIS 15605 (5th Cir. Miss. 1987), but see, Gross v. Chevrolet Country, 655 So. 2d 873, 1995 Miss. LEXIS 226 (Miss. 1995), cert. denied, 516 U.S. 1094, 116 S. Ct. 817, 133 L. Ed. 2d 761, 1996 U.S. LEXIS 776 (U.S. 1996).

Physician was not subject to jurisdiction, although physician had consummated transaction in Mississippi by purchasing property there, not related to lawsuit; therefore, nexus requirement was not satisfied. Rittenhouse v. Mabry, 832 F.2d 1380, 1987 U.S. App. LEXIS 15605 (5th Cir. Miss. 1987), but see, Gross v. Chevrolet Country, 655 So. 2d 873, 1995 Miss. LEXIS 226 (Miss. 1995), cert. denied, 516 U.S. 1094, 116 S. Ct. 817, 133 L. Ed. 2d 761, 1996 U.S. LEXIS 776 (U.S. 1996).

Out of state company which entered into contract with in-state company, which contract required at least partial performance within state, has purposefully availed itself of privileges of conducting activities within state and its connection with forum was such that it should reasonably have anticipated being brought into court within state, as certain elements of contract and subsequent agreements were to be performed by out of state company within state relating to specifications of work to be done and testing of completed work, all to be performed within state. Sorrels Steel Co. v. Great Southwest Corp., 651 F. Supp. 623, 1986 U.S. Dist. LEXIS 20575 (S.D. Miss. 1986).

Plaintiffs failed to make prima facie showing that corporate veil of subsidiary corporation should be preliminarily pierced for purposes of attaining long-arm jurisdiction over parent corporation or individual alleged to have been president of both corporations when cause of action arose, where, although there existed commonality of ownership or officers of both corporations, plaintiffs made no attempt to satisfy requirement of particularized factual allegations tending to show applicability of "piercing" doctrine, and they have not pled specific facts sufficient to establish that subsidiary corporation at anytime operated as alter ego of corporate officer. McCardle v. Arkansas Log Homes, Inc., 633 F. Supp. 897, 1986 U.S. Dist. LEXIS 28846 (S.D. Miss. 1986).

Mississippi court lacks jurisdiction over out-of-state corporate defendant where corporate defendant has no contract with resident of state to be performed in whole or in part by any party in state and the corporate defendant has no other contacts with state; Mississippi court lacks jurisdiction over corporate defendant in transaction arising over sale of out-of-state property which took place outside of Mississippi where only arguable contact with State of Mississippi is assembly and transfer of collateral to plaintiff in Mississippi which would transpire between plaintiff and trustee bank. Cappaert v. Preferred Equities Corp., 613 F. Supp. 264, 1985 U.S. Dist. LEXIS 17906 (S.D. Miss. 1985).

Miss. Code § 13-3-57 does not confer jurisdiction over out-of-state corporate defendant in action for fraud, negligent misrepresentation, breach of fiduciary duties, and violations of federal commodities laws, notwithstanding plaintiff's contentions (1) that his economic loss in Mississippi causes tort to have occurred in Mississippi, and (2) that defendant's advertisement in Wall Street Journal circulated and read by plaintiff in Mississippi, telephone calls to and from Mississippi, and fact that plaintiff's checks were drawn on his Mississippi account are sufficient bases for exercise of in personam jurisdiction. Paul v. International Precious Metals Corp., 613 F. Supp. 174, 1985 U.S. Dist. LEXIS 18214 (S.D. Miss. 1985).

When defendant in securities action took funds beyond borders of Mississippi in violation of injunction and in furtherance of his plan to secrete funds with knowledge and consent of its agents, such action satisfied in-state requirement of § 13-3-57 as far as agents are concerned. Waffenschmidt v. Mackay, 763 F.2d 711, 1985 U.S. App. LEXIS 30619 (5th Cir. Miss. 1985), cert. denied, 474 U.S. 1056, 106 S. Ct. 794, 88 L. Ed. 2d 771, 1986 U.S. LEXIS 2324 (U.S. 1986).

Before personal jurisdiction may be exercised under "doing-business" provision of § 13-3-57, there must be sufficient nexus between activities of defendant within state and plaintiff's cause of action; mere fact that defendant power saw manufacturer markets its products nationally and that some of these goods find their way into Mississippi is not sufficient nexus to subject manufacturer, which is corporation domiciled in Pennsylvania and is division of Maryland corporation, to in-personam jurisdiction under "doing-business" provision. Smith v. De Walt Products Corp., 743 F.2d 277, 1984 U.S. App. LEXIS 17911 (5th Cir. Miss. 1984).

Contacts between defendant foreign corporation and forum state in wrongful death and negligence action were insufficient to assert in personam jurisdiction over defendant where contacts consisted of sending defendant's chief executive officer to forum state for contract-negotiation session, accepting checks drawn on bank located in forum state, purchasing equipment and services from a manufacturer located in forum state, and sending personnel to manufacturer's facilities for training in the state. Helicopteros Nacionales de Colombia, S. A. v. Hall, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404, 1984 U.S. LEXIS 68 (U.S. 1984).

Publishing corporation's regular circulation of magazines in forum state is sufficient to support assertion of jurisdiction in libel action based on contents of magazine, even where single publication rule is applied. Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790, 1984 U.S. LEXIS 40 (U.S. 1984).

In an action brought by a bank to foreclose its deed of trust executed by a corporation and secured by the personal guarantees of five of the corporation's stockholders, the chancery court had jurisdiction under § 13-3-57 over a nonresident stockholder, even though the instruments had been executed out of state, since they were to be performed in Mississippi, were construed according to Mississippi law, and were also excepted in Mississippi. First Mississippi Nat'l Bank v. S & K Enterprises, Inc., 460 So. 2d 839, 1984 Miss. LEXIS 2008 (Miss. 1984).

In an action by a Mississippi citizen charging breach of contract and fraud against a Texas corporation arising out of an oral agreement for an exclusive dealership to sell the corporation's product in Mississippi, the trial court erred in granting the corporation's motion to dismiss for lack of jurisdiction where, by purposefully availing itself of the privilege of doing business with a Mississippi resident, accepting several orders made through the resident and shipping its product to the purchasers in Mississippi, the corporation subjected itself to the jurisdiction of the courts of Mississippi under the long arm statute. Murray v. Huggers Mfg., Inc., 398 So. 2d 1323, 1981 Miss. LEXIS 2026 (Miss. 1981).

Personal jurisdiction over Louisiana corporation existed in Mississippi under § 13-3-57 where Louisiana corporation did business of a systematic and ongoing nature in Mississippi, plaintiffs' cause of action was incident to that business activity, and assertion of jurisdiction over Louisiana corporation did not offend notions of fairness or substantial justice. Aycock v. Louisiana Aircraft, Inc., 617 F.2d 432, 1980 U.S. App. LEXIS 17435 (5th Cir. Miss. 1980), cert. denied, 450 U.S. 917, 101 S. Ct. 1361, 67 L. Ed. 2d 343, 1981 U.S. LEXIS 829 (U.S. 1981).

A nonresident manufacturer of grinding machines was not amenable to suit in Mississippi by a Louisiana resident who had worked in Mississippi as an operator of such machine and who had allegedly become permanently disabled as a result of the constant inhalation of dust particles at work, where, inter alia, defendant manufacturer did not have a single employee in the state when the cause of action accrued or when the complaint was filed, even though a single corporate employee subsequently moved to the state and was served with process, and where defendant had never paid state taxes or availed itself of the protection of any state laws; further, plaintiff had only availed himself of the protection of Mississippi's law to the limited extent that he worked and traveled in the state. Washington v. Norton Mfg., Inc., 588 F.2d 441, 1979 U.S. App. LEXIS 17345 (5th Cir. Miss.), cert. denied, 442 U.S. 942, 99 S. Ct. 2886, 61 L. Ed. 2d 313, 1979 U.S. LEXIS 2186 (U.S. 1979).

The "doing business" provision of the Mississippi long-arm statute cannot be invoked by a nonresident plaintiff in a diversity action against a nonresident defendant and the statute, so construed, does not deny a nonresident plaintiff privileges and immunities secured under the federal constitution. Breeland v. Hide-A-Way Lake, Inc., 585 F.2d 716, 1978 U.S. App. LEXIS 7655 (5th Cir. Miss. 1978).

A Mississippi court had jurisdiction under § 13-3-57 in a breach of contract action involving the sale of a tractor by a non-resident seller to a resident purchaser where the contract was made by phone, payment was sent from Mississippi to the non-resident seller, and the seller delivered the tractor through its agent to the purchaser in Mississippi. Miller v. Glendale Equipment & Supply, Inc., 344 So. 2d 736, 1977 Miss. LEXIS 2448 (Miss. 1977).

A foreign corporation which made advances by way of loans to a Mississippi corporation which were used by the latter corporation in its Mississippi operation was not doing business in Mississippi within the meaning of this section [Code 1972, § 13-3-57]. Riley v. Communications Consultants, Inc., 385 F. Supp. 296, 1974 U.S. Dist. LEXIS 11784 (N.D. Miss. 1974).

It is no longer necessary, in a products liability claim, to determine whether the manufacturer is "doing business", as interpreted by earlier Mississippi decisions, to render the nonresident manufacturer subject to suit and jurisdiction under the state's "long-arm" statute. Breedlove v. Beech Aircraft Corp., 334 F. Supp. 1361, 1971 U.S. Dist. LEXIS 11662 (N.D. Miss. 1971).

A nonresident manufacturer, which had no representatives or any personal ties within the state, but which placed its manufactured heating unit in interstate commerce for distribution and sale to consumers, was subject to in personam jurisdiction within the state for purposes of a products liability action, when one of its heating units overheated and resulted in a fire which destroyed the plaintiffs' home because of an alleged defect. Smith v. Temco, Inc., 252 So. 2d 212, 1971 Miss. LEXIS 1194 (Miss. 1971).

A New Orleans television broadcasting station whose programs were regularly heard by thousands of residents of the Mississippi Gulf coast area, which regularly reported news events in that area, solicited advertising there, and carried advertising by New Orleans stores directed especially toward Gulf coast residents, had sufficient minimum contacts in Mississippi to be amenable to process under this section [Code 1942, § 1437]. Casano v. WDSU--TV, Inc., 313 F. Supp. 1130, 1970 U.S. Dist. LEXIS 11516 (S.D. Miss. 1970), aff'd, 464 F.2d 3, 1972 U.S. App. LEXIS 8537 (5th Cir. Miss. 1972).

An action initiated in a Virginia federal district court by railroad companies against, among others, two car leasing companies for damages sustained as a result of a derailment occurring in Mississippi, would be transferred to a Mississippi federal court, where one of the companies leased cars with 6% of its lease revenue attributable to miles traveled over Mississippi tracks, and the other leasing company systematically solicited and did business within Mississippi and filed annual sales tax returns in Mississippi, and where, in both instances, such contacts were directly involved with the alleged cause of action; the contacts being sufficient to make the defendant leasing companies amenable, constitutionally, to service of process under the Mississippi "long arm" statute. Alabama G. S. R. Co. v. Allied Chemical Co., 312 F. Supp. 3, 1970 U.S. Dist. LEXIS 12090 (E.D. Va. 1970).

Where a Wisconsin corporate manufacturer had 10 distributors in Mississippi, made substantial sales to its distributors, sent an average of 17 employees into the state each year to give assistance to its distributors, had several pieces of equipment operating within the state, extended and secured credit within the state and made contracts with its distributors, giving it considerable control over their activities, the corporation was "doing business" in Mississippi within the "long-arm" and "doing business" statutes. Hyde Constr. Co. v. Koehring Co., 321 F. Supp. 1193, 1969 U.S. Dist. LEXIS 13680 (D. Miss. 1969).

Neither the fact that a manufacturer of equipment sold its products to Mississippi distributors or wholesalers, nor the fact that the manufacturer had employees on an average of 17 or 18 per year visiting within Mississippi to give assistance to the distributors in the sale of equipment manufactured by it and to help repair and adjust such equipment, standing alone, would compel a finding that the manufacturer is or was "doing business" within the state of Mississippi under the provisions of Code 1942, § 1437 or Code 1942, § 5345. Hyde Constr. Co. v. Koehring Co., 321 F. Supp. 1193, 1969 U.S. Dist. LEXIS 13680 (D. Miss. 1969).

Where a Wisconsin corporation had ten distributors within Mississippi, making substantial sales, had equipment in the state, and was a creditor secured by security instruments in the state, and where its employees frequently visited the state, the corporation had sufficient contacts within Mississippi to satisfy due process for the exercise of in personam jurisdiction. Hyde Constr. Co. v. Koehring Co., 321 F. Supp. 1193, 1969 U.S. Dist. LEXIS 13680 (D. Miss. 1969).

Where the contract between a nonresident distributor of foreign automobiles and a Mississippi dealer gave the distributor almost absolute control over the method and manner of doing business by the dealer, the distributor was doing business in Mississippi within the purview of this section [Code 1942, § 1437]. Easterling v. Volkswagen of America, Inc., 308 F. Supp. 966, 1969 U.S. Dist. LEXIS 13400 (S.D. Miss. 1969).

The importer of foreign automobiles located in another state which did not enter into any contract with anyone to perform any services or do any work within Mississippi, did no business and performed no acts within that state which would constitute its doing business there, did not deliver any automobiles to anyone within the state, entered into no contract with anyone therein, maintained no corporate records or corporate office, had no telephone listing, no agents or employees of any kind and no "minimum contact" with anyone was not amenable to process under this section [Code 1942, § 1437]. Easterling v. Volkswagen of America, Inc., 308 F. Supp. 966, 1969 U.S. Dist. LEXIS 13400 (S.D. Miss. 1969).

A nonresident individual who sold a portable elevator to a resident of Mississippi, and, through his agents and in his own truck, delivered it to the purchaser in Mississippi, had prior to sale assembled the elevator at his premises in Tennessee, and who over a period of 10 or 15 years made 15 percent of his total gross sales to residents of Mississippi, and who, in connection with these sales, it was his common practice to go to the customer's home within the state to appraise property offered as trade-in on new equipment and delivered the merchandise within that state, was amenable to process under this section [Code 1942, § 1437]. Smith v. Barker, 306 F. Supp. 1173, 1968 U.S. Dist. LEXIS 7727 (N.D. Miss. 1968).

A nonresident individual whose agents, trucks, and other property were brought into Mississippi in the ordinary course of his business, had contacts within that state which were purposeful, continuous, and systematic activities, and rendered him amenable to process, despite the fact that he maintained no telephone listing, bank account, office, warehouse, or storage facilities there. Smith v. Barker, 306 F. Supp. 1173, 1968 U.S. Dist. LEXIS 7727 (N.D. Miss. 1968).

An elevator manufacturing company which markets its products through various distributors in the United States, but has never had any dealers or salesmen residing in Mississippi, has never solicited through salesmen any orders within the state, has never had a warehouse or inventory of any kind located there, never maintained an office, telephone listing, bank account, or agent for the service of process, made no sales to its customers directly in the state, has made no shipments into the state except an inconsequential amount of truck hoists and parts and, even in that case, the items delivered were sold to manufacturers' representatives, none of whom resided in the state, and were transported into the state by common carrier and not in its own trucks, was not amenable to process under the provisions of this section [Code 1942, § 1437]. Smith v. Barker, 306 F. Supp. 1173, 1968 U.S. Dist. LEXIS 7727 (N.D. Miss. 1968).

A nonresident defendant who entered into a contract to perform work in Mississippi and performed the work within the state is subject to suit in the courts of Mississippi under the provisions of this section [Code 1942, § 1437]. C. H. Leavell & Co. v. Doster, 211 So. 2d 813, 1968 Miss. LEXIS 1276 (Miss. 1968).

A nonresident employed by a crime commission of another state who, pursuant to invitation, and without remuneration or payment of expenses or without knowledge of his employers, came into Mississippi and delivered a speech before a religious group in which he allegedly slandered certain Mississippi residents was not amenable to the process and jurisdiction of a Mississippi court. Mladinich v. Kohn, 250 Miss. 138, 164 So. 2d 785, 1964 Miss. LEXIS 451 (Miss. 1964).

Whether one is doing business within the state within the contemplation of this section [Code 1942, § 1437] must be determined from the facts of each case. Hazell Machine Co. v. Shahan, 249 Miss. 301, 161 So. 2d 618, 1964 Miss. LEXIS 392 (Miss. 1964).

A foreign corporation entering into a distributorship agreement, held to be doing business within the state within the meaning of this section [Code 1942, § 1437]. Hazell Machine Co. v. Shahan, 249 Miss. 301, 161 So. 2d 618, 1964 Miss. LEXIS 392 (Miss. 1964).

A press association organized as a mutual cooperative and nonprofit organization, formed to gather, collect, and interchange with its members news and intelligence which, under the terms of its charter, it could neither sell nor traffic in, but distributed only to its members who apportioned costs of the services among themselves in the form of assessments, and which only employed five persons within the state to collect and disseminate news and repair equipment, is not an organization doing business within the state and therefore is not amenable to process under the provisions of this section [Code 1942, § 1437]. Walker v. Savell, 335 F.2d 536, 1964 U.S. App. LEXIS 4508 (5th Cir. Miss. 1964), limited, Marathon Oil Co. v. Ruhrgas, A.G., 115 F.3d 315, 1997 U.S. App. LEXIS 13676 (5th Cir. Tex. 1997).

A single isolated and incidental activity does not constitute doing business in the state within the meaning of this statute. Mississippi Chemical Corp. v. Vulcan-Cincinnati, Inc., 224 F. Supp. 11, 1963 U.S. Dist. LEXIS 6402 (S.D. Miss. 1963), aff'd, 338 F.2d 662, 1964 U.S. App. LEXIS 3743 (5th Cir. Miss. 1964).

A foreign corporation which has appointed a franchise dealer within the state, indoctrinated him in the conduct of the business, and having the right under the franchise agreement to supervise it, is doing business in the state so as to be subject to service of process through the secretary of state. Century Brick Corp. v. Carroll, 247 Miss. 514, 153 So. 2d 683, 1963 Miss. LEXIS 319 (Miss. 1963).

Mere incidental inspection by a foreign corporation of a plant constructed by another in Mississippi, pursuant to an agreement made in another state to furnish the design and any necessary scientific and engineering advice does not constitute doing business in the state within the meaning of this provision. Mississippi Chemical Corp. v. Vulcan-Cincinnati, Inc., 224 F. Supp. 11, 1963 U.S. Dist. LEXIS 6402 (S.D. Miss. 1963), aff'd, 338 F.2d 662, 1964 U.S. App. LEXIS 3743 (5th Cir. Miss. 1964).

Gathering and relaying of news in Mississippi by the Associated Press, held not to constitute doing business in the state so as to be subject to service of process there. Walker v. Savell, 218 F. Supp. 348, 1963 U.S. Dist. LEXIS 7513 (N.D. Miss. 1963), aff'd, 335 F.2d 536, 1964 U.S. App. LEXIS 4508 (5th Cir. Miss. 1964).

Isolated acts, not amounting to a continuity, do not warrant substituted service of process under this section [Code 1942, § 1437]. Hudgins v. Tug Kevin Moran, 206 F. Supp. 339, 1962 U.S. Dist. LEXIS 4700 (S.D. Miss. 1962).

Although it conducted occasional demonstrations of its products and sent complaint investigators into the state, a foreign corporation which had salesmen in the state doing promotional and sales work but who had no authority to close sales, and maintained no plant or sales office within the state, was not doing business in the state so as to subject it to the jurisdiction of the state court. Livestock Services, Inc. v. American Cyanamid Co., 244 Miss. 531, 142 So. 2d 210, 1962 Miss. LEXIS 473 (Miss. 1962).

In determining whether a corporation is doing business in the state, each case must be decided upon its peculiar facts. Jarrard Motors, Inc. v. Jackson Auto & Supply Co., 237 Miss. 660, 115 So. 2d 309, 1959 Miss. LEXIS 517 (Miss. 1959).

Fact that under contract nonresident automotive distributors possessed almost absolute control over the method and manner of doing business by resident dealer, together with the failure of the nonresident distributors to comply with Code 1942, §§ 8072 and 8073, established that nonresident distributors were doing business within the state. Jarrard Motors, Inc. v. Jackson Auto & Supply Co., 237 Miss. 660, 115 So. 2d 309, 1959 Miss. LEXIS 517 (Miss. 1959).

Under this section [Code 1942, § 1437] authorizing substituted service of process on foreign corporations doing business within state without having qualified therefor, jurisdiction is not conferred on a single act or acts, but a series of acts amounting to a continuity is required. Mississippi Wood Preserving Co. v. Rothschild, 201 F.2d 233, 1953 U.S. App. LEXIS 2290 (5th Cir. Miss. 1953).

Whether a corporation is doing business in a state in the sense required for a process statute is a question dependent primarily upon the facts and circumstances of each particular case. Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 1951 Miss. LEXIS 322 (Miss. 1951).

A less strict interpretation of the phrase doing business, is applied where there is an issue of whether a state board has jurisdiction, than is applied where the statute involved is one stating that a corporation must qualify before doing business in order to have access to the courts of state. Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 1951 Miss. LEXIS 322 (Miss. 1951).

Where a corporation has entered the state through its agent and is engaged in carrying on and transacting through them a substantial part of its ordinary business on the regular basis, it is doing business within the state so as to be subject to process. Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 1951 Miss. LEXIS 322 (Miss. 1951).

Where a lumber company, a Louisiana corporation, executed in this state a contract for the manufacture of lumber and the contract was wholly performed in this state and also the contract involved continuous substantial series of transactions covering a period of two years during which the lumber company sent its trucks into the state several times each week to pick up the timber, the lumber company was doing business within the statute providing for service against nonresident corporation doing business in the state. Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 1951 Miss. LEXIS 322 (Miss. 1951).

Nonresident engaging in business of termite eradication and control in this state under license from state plant board authorizing him to conduct such business is subject to action for damages in this state for breach of contract entered into and to be performed in this state and may be brought into court by service of process upon secretary of state in manner provided by Code 1942, § 1438. Condon v. Snipes, 205 Miss. 306, 38 So. 2d 752, 1949 Miss. LEXIS 433 (Miss. 1949).

To constitute a foreign corporation doing business in a particular jurisdiction, the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state where the service of process is attempted. Lee v. Memphis Pub. Co., 195 Miss. 264, 14 So. 2d 351, 1943 Miss. LEXIS 133 (Miss. 1943).

Maintenance by a foreign newspaper corporation of a news-gathering office in the state, the employment of a resident contract man to recommend suitable persons to become local distributors in the state, and a contract with a truck operator to transport its papers into the state for sale and distribution by local distributor, did not constitute "doing business" in the state so as to make such corporation amenable to service of process in the state. Lee v. Memphis Pub. Co., 195 Miss. 264, 14 So. 2d 351, 1943 Miss. LEXIS 133 (Miss. 1943).

4. Non-resident heirs of alleged tortfeasor.

Mississippi's long-arm statute did not apply to nonresident individual heirs of deceased alleged tortfeasor as service could only be made upon nonresident executor, administrator, receiver, trustee or any other selected or appointed representative. Sealy v. Goddard, 910 So. 2d 502, 2005 Miss. LEXIS 91 (Miss. 2005).

5. Illustrative cases.

Circuit court properly denied an insurer's motion to dismiss for lack of personal jurisdiction because the insurer waived its defense, and the long-arm statute was irrelevant; the insurer's implied consented to the State's jurisdiction created an independent basis for jurisdiction. Pekin Ins. Co. v. Hinton, 192 So. 3d 966, 2016 Miss. LEXIS 166 (Miss. 2016).

Circuit court lacked personal jurisdiction over a driver where regardless of whether the driver's acts constituted doing business, the suing driver, as a Tennessee resident, could not utilize any of the three prongs of the long-arm statute. Williams v. Liberty Mut. Fire Ins. Co., 187 So. 3d 166, 2015 Miss. App. LEXIS 379 (Miss. Ct. App. 2015).

Because a nonresident paramour's actions allegedly broke up a wife's Mississippi marriage, the long-arm statute's language was sufficiently broad enough to bring the paramour within its scope; however, since the wife did not meet her burden of showing the paramour had the constitutionally required purposeful minimum contacts in Mississippi, the circuit court erred in denying the paramour's motion to dismiss for lack of personal jurisdiction. Nordness v. Faucheux, 170 So. 3d 454, 2015 Miss. LEXIS 295 (Miss. 2015).

Former wife should not have been ordered to pay attorneys' fees in an alienation of affection case because the claim was not frivolous, groundless in fact or in law, or vexatious where there was personal jurisdiction over the claim in Mississippi; moreover, the court could not have concluded that the claim had no hope of success since it fell within the long-arm statute. Miller v. Provident Adver. & Mktg., 155 So. 3d 181, 2014 Miss. App. LEXIS 339 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 21 (Miss. 2015), cert. denied, 154 So. 3d 33, 2015 Miss. LEXIS 29 (Miss. 2015), cert. denied, — So. 3d —, 2015 Miss. LEXIS 34 (Miss. 2015), cert. denied, — So. 3d —, 2015 Miss. LEXIS 32 (Miss. 2015), cert. denied, — U.S. —, 135 S. Ct. 2862, 192 L. Ed. 2d 897, 2015 U.S. LEXIS 4230 (U.S. 2015).

Trial court had personal jurisdiction over a former wife's alienation of affection claim under the Mississippi long-arm statute because there was an allegation of sexual activity between a paramour and the wife's husband within the state of Mississippi that contributed to the breakup of the marriage; the fact that sexual activity occurred in Mississippi constituted purposeful availment for purposes of personal jurisdiction. However, the complaint did not allege that any of the acts relating to a claim of intentional infliction of emotional distress occurred in Mississippi or that the sexual activity that occurred in Mississippi inflicted emotional distress. Miller v. Provident Adver. & Mktg., 155 So. 3d 181, 2014 Miss. App. LEXIS 339 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 21

(Miss. 2015), cert. denied, 154 So. 3d 33, 2015 Miss. LEXIS 29 (Miss. 2015), cert. denied, — So. 3d —, 2015 Miss. LEXIS 34 (Miss. 2015), cert. denied, — So. 3d —, 2015 Miss. LEXIS 32 (Miss. 2015), cert. denied, — U.S. —, 135 S. Ct. 2862, 192 L. Ed. 2d 897, 2015 U.S. LEXIS 4230 (U.S. 2015).

Out-of-state law firm was subject to personal jurisdiction in Mississippi with respect to claims of legal malpractice and related other issues because firm committed tort against contractor within State of Mississippi, it had sufficient minimum contacts within State, and traditional notions of fair play and substantial justice were not offended because it purposefully availed itself of benefits and protections of Mississippi law. Baker & McKenzie, LLP v. Evans, 123 So. 3d 387, 2013 Miss. LEXIS 548 (Miss. 2013).

As neither a hotel management company nor its president were doing business in Mississippi for purposes of the long-arm statute, Miss. Code Ann. § 13-3-57, or had any reason to anticipate being haled into court there, dismissal of an action arising out of injuries a minor sustained at a Louisiana hotel for lack of personal jurisdiction was proper. Wilson v. Highpointe Hospitality, Inc., 62 So. 3d 999, 2011 Miss. App. LEXIS 267 (Miss. Ct. App. 2011).

In a medical-malpractice action, the circuit court did not err in finding that traditional notions of fair play and substantial justice were not offended in exercising personal jurisdiction over the doctor because nothing in the record suggested that the trial court was an inefficient method of resolving the dispute or that it imposed an undue burden to have the doctor defend the suit in Mississippi. Dunn v. Yager, 58 So. 3d 1171, 2011 Miss. LEXIS 204 (Miss. 2011).

In a medical-malpractice action, the circuit court did not err in finding that the long-arm statute, Miss. Code Ann. § 13-3-57, applied to the doctor because the patient's actual injury, not the mere consequences thereof, occurred in Mississippi. She filled the prescription in Mississippi, consumed the prescription drugs in Mississippi, and the effects of her injury were suffered in Mississippi. Dunn v. Yager, 58 So. 3d 1171, 2011 Miss. LEXIS 204 (Miss. 2011).

Louisiana resident's emails, phone calls, and text messages to a Mississippi resident were sufficient "minimum contacts" with Mississippi for the purposes of personal-jurisdiction analysis. Knight v. Woodfield, 50 So. 3d 995, 2011 Miss. LEXIS 6 (Miss. 2011).

In a negligence case, the requirements for subject matter jurisdiction were met under Miss. Code Ann. § 13-3-57 because a car wreck and alleged negligence occurred in Mississippi. Courtney v. McCluggage, 991 So. 2d 642, 2008 Miss. App. LEXIS 571 (Miss. Ct. App. 2008).

Physician, who was licensed and occasionally practiced medicine in Mississippi, and a medical clinic, which had an office and rented timeshare office space in Mississippi, subjected themselves to suit under the clear terms of the long-arm statute, Miss. Code Ann. § 13-3-57, by doing business in the state. Considering the interests of Mississippi in providing a forum for legal redress for residents who were negligently injured by out-of-state physicians, the court found that the circuit court's assumption of personal jurisdiction over the physician comported with traditional notions of fair play and substantial justice and did not offend U.S. Const. amend. XIV. Estate of Jones v. Phillips, 992 So. 2d 1131, 2008 Miss. LEXIS 420 (Miss. 2008).

Trial court erred in dismissing the homeowners' claims alleging that the original owners knew of a home's defects at the time they sold it to the subsequent owners because the assertion that the original owners committed a Mississippi tort sustained personal jurisdiction under Miss. Code Ann. § 13-3-57, regardless of whether it was a tort against the homeowners or the subsequent owners. Estes v. Bradley, 954 So. 2d 455, 2006 Miss. App. LEXIS 912 (Miss. Ct. App. 2006), overruled in part, Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Miss. Code Ann. § 13-3-57 permitted a district court in Mississippi to exercise personal jurisdiction over a helicopter lessor, which was a California corporation, and a platform designer, who was a Tennessee domiciliary, in an estate representative's suit to recover damages for a decedent's fall from a helicopter work platform because the fall occurred in Mississippi. Seiferth v. Helicopteros Atuneros, Inc., 472 F.3d 266, 2006 U.S. App. LEXIS 30391 (5th Cir. Miss. 2006), limited, Sutton v. Advanced Aquaculture Sys., 621 F. Supp. 2d 435, 2007 U.S. Dist. LEXIS 55396 (W.D. Tex. 2007).

Mississippi attorney's breach of contract suit, filed in a Mississippi federal district court against Louisiana and Pennsylvania attorneys seeking payment for litigation services, was transferred under the Fifth Circuit's first-to-file rule to a Louisiana federal district court in which defendants had previously filed a declaratory judgment action raising similar issues, even though Mississippi was a proper venue under 28 U.S.C.S. § 1391(a) because some of the acts sued upon took place there, the court had long-arm personal jurisdiction over defendants under Miss. Code Ann. § 13-3-57, and Mississippi was a convenient forum under 28 U.S.C.S. § 1404(a). Street v. Smith, 456 F. Supp. 2d 761, 2006 U.S. Dist. LEXIS 62373 (S.D. Miss. 2006).

Where rental and financial services companies alleged that an affiliate of a rental services company tortiously interfered with a non-compete contract involving a Mississippi resident, the companies met the tort requirement of the long arm statute, Miss. Code Ann. § 13-3-57, and also met the minimum contracts requirement of due process. U-Save Auto Rental of Am., Inc. v. Moses, 2006 U.S. Dist. LEXIS 5284 (S.D. Miss. Jan. 27, 2006).

Under Miss. Code Ann. § 13-3-57, a district court in Mississippi had personal jurisdiction over a distributor in employees' suit to recover funds for medical monitoring due to their exposure to beryllium-containing products sold by the distributor to their employer; although the distributor did not do business in Mississippi and sold the products to the employer in California, the injuries took place in Mississippi, and further, there was evidence that the distributor knew its products would be used only at the employer's Mississippi facility. Paz v. Brush Engineered Materials, Inc., 445 F.3d 809, 2006 U.S. App. LEXIS 8509 (5th Cir. Miss. 2006).

In a products liability action, the injured worker's motion for summary judgment was denied; it was premature in that he failed to allege any facts supporting the exercise of personal jurisdiction over the foreign manufacturer under Miss. Code Ann. § 13-3-57, other than that the subject incident and his injuries occurred in Mississippi. Sims v. A & A Saw & Mach. Co., 2005 U.S. Dist. LEXIS 34351 (S.D. Miss. Sept. 7, 2005).

Where the tort and its resultant injuries occurred within Mississippi, the court's exercise of personal jurisdiction over defendants was comfortably within the contours of the "tort prong" of Miss. Code Ann. § 13-3-57; the allegedly defective pipe collapsing completed the tort (damage requirement) and created numerous economic effects (costs associated with the collapsing pipe and subsequent redrilling of the oil well). Tellus Operating Group, L.L.C. v. R & D Pipe Co., 377 F. Supp. 2d 604, 2005 U.S. Dist. LEXIS 19159 (S.D. Miss. 2005).

In a fraud suit brought by investors against defendants, a Pennsylvania attorney and his law firm, it was appropriate to exercise personal jurisdiction over defendants under the Mississippi long-arm statute, Miss. Code Ann. § 13-3-57, because the investors alleged that the actual invasion of their legal rights occurred in Mississippi when they were induced to invest in a trust in reliance on an opinion letter directed by defendants to them in Mississippi. Vig v. Indianapolis Life Ins. Co., 384 F. Supp. 2d 975, 2005 U.S. Dist. LEXIS 18453 (S.D. Miss. 2005).

Court denied defendants' motion to dismiss a physician's breach of contract action for lack of personal jurisdiction because the fact that defendants sent an agent into Mississippi to help execute an additional portion of the contract was sufficient to satisfy the contract prong of the Mississippi long-arm statute, Miss. Code Ann. § 13-3-57, and perhaps even the doing business prong. Durham v. Katzman, 375 F. Supp. 2d 495, 2005 U.S. Dist. LEXIS 17847 (S.D. Miss. 2005).

Application of the Mississippi long-arm statute, Miss. Code Ann. § 13-3-57 (Rev.

2002), was inappropriate in an action filed in Mississippi against an Illinois resident based on the fact that the Illinois resident struck a vehicle filled with Mississippi residents. Illinois was the place where the tort was completed. Yatham v. Young, 912 So. 2d 467, 2005 Miss. LEXIS 672 (Miss. 2005).

Employees claimed that the court could assert personal jurisdiction over the manufacturer, a foreign corporation with no contacts in the forum state, because it was insufficiently separate from its subsidiary, which did have contacts in the forum state; however, the manufacturer's vice-president stated that the manufacturer was a holding company incorporated under the laws of Ohio, and the subsidiary was separately and adequately capitalized and the manufacturer did not pay the subsidiary's expenses. Thus, the contacts between the manufacturer and its subsidiary were insufficient to satisfy Mississippi's long arm statute, Miss. Code Ann. § 13-3-57. Paz v. Brush Engineered Materials, Inc., 351 F. Supp. 2d 580, 2005 U.S. Dist. LEXIS 665 (S.D. Miss. 2005), rev'd, in part, 445 F.3d 809, 2006 U.S. App. LEXIS 8509 (5th Cir. Miss. 2006), aff'd, 483 F.3d 383, 2007 U.S. App. LEXIS 7398 (5th Cir. Miss. 2007).

Where the employees attached a one-page sheet from the manufacturer's website, which showed the name of the fabricator, among others, the document clearly did not provide evidence of contacts between the fabricator and the forum state sufficient for the exercise of personal jurisdiction under Miss. Code Ann. § 13-3-57. Paz v. Brush Engineered Materials, Inc., 351 F. Supp. 2d 580, 2005 U.S. Dist. LEXIS 665 (S.D. Miss. 2005), rev'd, in part, 445 F.3d 809, 2006 U.S. App. LEXIS 8509 (5th Cir. Miss. 2006), aff'd, 483 F.3d 383, 2007 U.S. App. LEXIS 7398 (5th Cir. Miss. 2007).

As a company's business contacts with the state were not systematic and continuous, and the personal injury lawsuit filed by an individual did not arise from the company's contacts in the state, the company's motion to dismiss for lack of personal jurisdiction was affirmed. Williams v. Bud Wilson's Mobile Home Serv., 887 So. 2d 830, 2004 Miss. App. LEXIS 670 (Miss. Ct. App.), cert. denied, 888 So. 2d 1177, 2004 Miss. LEXIS 1437 (Miss. 2004).

In a negligence action by property owners in Mississippi regarding flooding, Mississippi had a strong interest in adjudicating the dispute because Mississippi residents were injured, Mississippi property was destroyed, and the City of Mobile, Alabama, and the Board of Water & Sewer Commissioners of the City of Mobile continued to release water from the subject reservoir. Also, the interest of the hundreds of other Mississippi property owners in obtaining convenient and effective relief was furthered by keeping the suit in Mississippi because their property was located in the county where the suit was filed; maintenance of the suit did not offend "traditional notions of fair play and substantial justice," and application of the "long-arm" statute in the case did not violate the United States Constitution. Horne v. Mobile Area Water & Sewer Sys., 897 So. 2d 972, 2004 Miss. LEXIS 846 (Miss. 2004), cert. denied, 544 U.S. 922, 125 S. Ct. 1652, 161 L. Ed. 2d 479, 2005 U.S. LEXIS 2480 (U.S. 2005), cert. denied, 544 U.S. 922, 125 S. Ct. 1662, 161 L. Ed. 2d 480, 2005 U.S. LEXIS 2484 (U.S. 2005).

In a bad faith denial of insurance benefits suit filed by Florida residents, the district court in Mississippi lacked personal jurisdiction over an Iowa health management company that processed medical claims outside the forum. Walker v. World Ins. Co., 289 F. Supp. 2d 786, 2003 U.S. Dist. LEXIS 19503 (S.D. Miss. 2003).

Where Louisiana auto dealer's radio ads reached into Mississippi, it sold autos to Mississippi residents, and it contracted with plaintiff bank in Mississippi, its minimum contacts with Mississippi allowed that state to exercise personal jurisdiction over the dealer; moreover, since the dealer's facilities were not far from the forum, it was not unfair to force it to defend in Mississippi. BankPlus v. Toyota of New Orleans, 851 So. 2d 439, 2003 Miss. App. LEXIS 684 (Miss. Ct. App. 2003).

In a Jones Act case, the trial court had jurisdiction over a non-resident defendant that had numerous employees from Mississippi and recruited employees from Mississippi by advertising in that state; further, the fact that the defendant had entered into a contract with the plaintiff in Mississippi was alone sufficient to subject the defendant to the personal jurisdiction of the Mississippi courts. Diamond Offshore Mgmt. Co. v. Marks, 2003 Miss. LEXIS 88 (Miss. Feb. 27, 2003), op. withdrawn, 2007 Miss. LEXIS 237 (Miss. Apr. 26, 2007).

Court had personal jurisdiction over a Taiwanese manufacturer in a suit brought by two distributors for breach of contract and tortious interference with contractual and business relations; the manufacturer sent invoices to and received payment from the distributors' Mississippi address and allegedly interfered with the distributors' contracts and business relations in Mississippi. Madami Int'l, LLC v. Dinli Metal Indus. Co., 276 F. Supp. 2d 586, 2002 U.S. Dist. LEXIS 26630 (S.D. Miss. 2002).

In an action arising from the purchase from the defendant by the plaintiff of tubing that was to be regularly used as production tubing for down-hole use in oil wells and saltwater disposal wells, two defendants who previously purchased and resold the tubing at issue were not subject to personal jurisdiction in Mississippi where both were foreign corporations, neither had any dealings with the plaintiff in Mississippi or elsewhere, and the transactions in which they sold the tubing occurred outside Mississippi. Willow Creek Exploration Ltd. v. Tadlock Pipe & Equip. Inc., 186 F. Supp. 2d 675, 2002 U.S. Dist. LEXIS 2570 (S.D. Miss. 2002).

The defendant nonresident corporation was entitled to dismissal of the complaint because the court had no basis for asserting personal jurisdiction over it, notwithstanding that the alleged tort was committed partly in Mississippi where the plaintiff was residing when he discovered an allegedly erroneous credit report by the defendant, since the defendant did not have minimum contacts with Mississippi and did not purposely avail itself of the benefits and privileges of the state. Shaw v. Excelon Corp., 167 F. Supp. 2d 917, 2001 U.S. Dist. LEXIS 18090 (S.D. Miss. 2001).

The defendant foreign corporation was not subject to long arm jurisdiction where the contract between the defendant and the plaintiff Mississippi corporation was entered into in Tennessee and was to be performed in Tennessee. McCain Builders, Inc. v. Rescue Rooter, LLC, 797 So. 2d 952, 2001 Miss. LEXIS 133 (Miss. 2001).

The defendant was "doing business" within the contemplation of the long-arm statute where she allegedly transmitted an email to a recipient or recipients in Mississippi as an attempt to solicit business for a particular website. Internet Doorway, Inc. v. Parks, 138 F. Supp. 2d 773, 2001 U.S. Dist. LEXIS 5128 (S.D. Miss. 2001).

The Mississippi long-arm statute did not allow a federal district court sitting in Mississippi to take jurisdiction over the defendant because the plaintiff, as a nonresident of Mississippi, could not take advantage of the contract portion of the Mississippi long-arm statute and any tort committed by the defendant was committed solely in Mexico. Submersible Sys. v. Perforadora Central, S.A. de C.V., 249 F.3d 413, 2001 U.S. App. LEXIS 8083 (5th Cir. Miss.), cert. denied, 534 U.S. 1055, 122 S. Ct. 646, 151 L. Ed. 2d 564, 2001 U.S. LEXIS 10844 (U.S. 2001).

In an action arising from the plaintiff's purchase of an airplane engine from an Arkansas corporation, the Arkansas corporation was not subject to jurisdiction in Mississippi since (1) no part of the contract between the parties was performed in whole or in part by either party in Mississippi, (2) no element of the alleged tortious conduct took place in Mississippi, (3) the defendants did not have a presence in Mississippi which was continuing and substantial in nature, (4) the defendants did not have sufficient minimum contacts with Mississippi such that maintaining the action would not offend traditional notions of fair play and substantial justice, and (5) the defendants did not have continuous and systematic contacts with Mississippi such that due process was satisfied. Thrash Aviation, Inc. v. Kelner Turbine, Inc., 72 F. Supp. 2d 709, 1999 U.S. Dist. LEXIS 17788 (S.D. Miss. 1999).

OPINIONS OF THE ATTORNEY GENERAL

The statute does not conflict with Rule 2.04 of the Uniform Rules of Procedure for Justice Court and, therefore, it may be used to serve out-of-state defendants with process of the justice courts by a private process server. Aldridge, July 17, 1998, A.G. Op. #98-0377

RESEARCH REFERENCES

ALR.

What constitutes doing business within the state by a foreign newspaper corporation. 38 A.L.R.2d 747.

Venue of action against nonresident motorist served constructively under statute in that regard. 38 A.L.R.2d 1198.

Place or type of motor vehicle accident as affecting applicability of statute providing for constructive or substituted service upon nonresident. 73 A.L.R.2d 1351.

Holding directors', officers', stockholders', or sales meetings or conventions in a state by foreign corporation as doing business or otherwise subjecting it to service of process and suit. 84 A.L.R.2d 412.

Manner of service of process upon foreign corporation which has withdrawn from state. 86 A.L.R.2d 1000.

Statutory service on nonresident motorists: return receipts. 95 A.L.R.2d 1033.

Applicability, to actions not based on products liability, of state statutes or rules of court predicating in personam jurisdiction over foreign manufacturers or distributors upon use of their goods within state. 20 A.L.R.3d 957.

In personam jurisdiction over nonresident director of forum corporation under long-arm statutes. 100 A.L.R.3d 1108.

Long-arm statutes: in personam jurisdiction over nonresident based on ownership, use, possession, or sale of real property. 4 A.L.R.4th 955.

Claim for punitive damages in tort action as surviving death of tortfeasor or person wronged. 30 A.L.R.4th 707.

Products liability: personal jurisdiction over nonresident manufacturer of component incorporated in another product. 69 A.L.R.4th 14.

In personam jurisdiction, in libel and slander action, over nonresident who mailed allegedly defamatory letter from outside state. 83 A.L.R.4th 1006.

Execution, outside of forum, of guaranty of obligation under contract to be performed within forum state as conferring jurisdiction over nonresident guarantors under "long arm statute" or rule of forum. 28 A.L.R.5th 664.

Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 74, 75, 94 et seq.

59A Am. Jur. 2d, Partnership §§ 468-487.

62 Am. Jur. 2d, Process §§ 154, 155, 156.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Form 18.1 (Motion – To dismiss for lack of jurisdiction).

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Form 19.1 (Affidavit-In support of motion to dismiss complaint-Lack of jurisdiction over foreign corporation – Corporation not doing business in state – By president of corporation).

Service of process on foreign corporations, 20 Am. Jur. Pl & Pr Forms (Rev), Process, Forms 261 et seq.

Substituted Service, 16 Am. Jur. Pl & Pr Forms, Process, Form 16:297.

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

CJS.

72 C.J.S., Process §§ 93–95 et seq.

Lawyers' Edition.

State regulation of judicial proceedings as violating commerce clause (Art I, § 8, cl 3) of Federal Constitution – Supreme Court cases. 100 L. Ed. 2d 1049.

Law Reviews.

Note, Jurisdictional Analysis in Commercial Litigation – The Single Contract Case, 7 Miss. C. L. Rev. 87, Fall, 1986.

Hafter, Toward the Multistate Practice of Law Through Admission by Reciprocity. 53 Miss. L. J. 1, March 1983.

Symposium on Mississippi Rules of Civil Procedure: Joinder of Claims and Parties – Rules 13, 14, 17 and 18. 52 Miss. L. J. 37, March 1982.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§§ 13-3-59 and 13-3-61. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.
§ 13-3-59. [Codes, 1942, § 1439; Laws, 1940, ch. 246]
§ 13-3-61. [Codes, 1942, § 1440; Laws, 1940, ch. 246]

Editor's Notes — Former § 13-3-59 authorized the court to order such continuances as necessary to afford a nonresident reasonable opportunity to defend the action, provided that no action was triable until after thirty (30) days from date of service of process upon the secretary of state, provided that the fee required to be paid to the sheriff of Hinds County shall be taxed as other costs, and required the secretary of state to keep a record of all process served upon him.

Former § 13-3-61 provided for service when the defendant was a nonresident doing business in state, and provided that certain corporations were exempt.

§ 13-3-63. Service when defendant is nonresident motorist; appointment of secretary of state as agent.

The acceptance by a nonresident of the rights and privileges conferred by the provisions of this section, as evidenced by his operating, either in person or by agent or employee, a motor vehicle upon any public street, road or highway of this state, or elsewhere in this state, or the operation by a nonresident of a motor vehicle on any public street, road or highway of this state, or elsewhere in this state, other than under this section, shall be deemed equivalent to an appointment by such nonresident of the Secretary of State of the State of Mississippi to be his true and lawful attorney, upon whom may be served all lawful processes or summonses in any action or proceeding against him, growing out of any accident or collision in which said nonresident may be involved while operating a motor vehicle on such street, road or highway, or elsewhere in this state, and said acceptance or operation shall be a signification of his agreement that any such process or summons against him which is so served shall be of the same legal force and validity as if served on him personally. Service of such process or summons shall be made by the sheriff of Hinds County, upon prepayment of the fees to which he is entitled by law, by serving two (2) copies of the process or summons for each nonresident defendant, with a fee of Fifteen Dollars ($15.00) for each such defendant on the Secretary of State or by leaving two (2) copies of said process or summons with the fee in the office of the Secretary of State, and such service shall be service upon said nonresident defendant with the same force and effect as if such nonresident had been personally served with such process or summons within the State of Mississippi. One (1) of the copies of such process or summons shall be preserved by the Secretary of State as a record of his office. Notice of such service, together with a copy of the process or summons, shall be mailed forthwith as certified or registered mail, restricted for delivery to addressee only and with postage prepaid, by the Secretary of State to each such nonresident defendant at his last known address, which address shall be written on the process or summons upon the issuance thereof by the clerk of the court wherein the action is pending, or notice of such service and copy of process or summons actually shall be delivered to the said defendant. The defendant's return receipt or evidence of defendant's refusal to accept delivery of such certified or registered mail, in case such notice and copy of process or summons are sent by certified or registered mail, or affidavit of the person delivering such notice and copy of process or summons, in case such notice and copy of process or summons actually are delivered, shall be filed in the court wherein such action is pending before judgment can be entered against such nonresident defendant. The Secretary of State, upon receipt of such return receipt or evidence of the refusal of such defendant to accept delivery of such certified or registered mail, shall promptly return same to the clerk of the court wherein such action is pending, and the said clerk of the court shall promptly file and preserve same among the records of such action or proceeding. The court in which the action is pending may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action.

Any cause of action arising out of such accident or collision against any such nonresident, in case of the death of such nonresident, shall survive against his administrator, executor or other personal representative of his estate, and service of all necessary and lawful process or summons, when had or obtained upon any such nonresident owner, nonresident operator or agent or employee, or upon the executor, administrator or other legal representative of the estate of such nonresident owner or nonresident operator, in the manner as hereinbefore provided, for the service of all lawful processes or summonses, herein, shall be deemed sufficient service of process or summons to give any court of this state, in which such action may be filed in accordance with the statutes of the State of Mississippi, jurisdiction over the cause of action and over the nonresident owner, nonresident operator or agent or employee, or the nonresident executor, or administrator of such nonresident owner or nonresident operator, defendant or defendants, and shall warrant and authorize personal judgment against such nonresident owner, nonresident operator, agent, employee, executor or administrator or other legal representative of the estate of such nonresident owner or nonresident operator, defendant or defendants, in the event the plaintiff in such cause of action shall prevail.

The agency or relationship created under the provisions of this section by and between the nonresident owner or nonresident operator of a motor vehicle operating upon the public road, street or highway of this state, or elsewhere in this state, as hereinbefore set forth, in the event of the death of such nonresident owner or nonresident operator of such motor vehicle, shall survive and continue and extend to his executor, administrator or other legal representative of his estate, and the Secretary of State of the State of Mississippi shall be in the same position and relationship with respect to the executor, administrator or other legal representative of the estate of such nonresident owner or nonresident operator of such motor vehicle, as he was in or would have been in with the nonresident owner or nonresident operator of said motor vehicle, had such nonresident owner or nonresident operator survived, and in any action arising or growing out of such accident or collision in which such nonresident owner or nonresident operator of a motor vehicle may be involved while operating a motor vehicle on such street, road or highway or elsewhere in this state, where the nonresident owner or nonresident operator of such motor vehicle has died prior to the commencement of an action against him because of or growing out of such accident or collision, service of process or summons may be had or made upon the nonresident executor, administrator or other legal representative of the estate of such nonresident owner or operator of the motor vehicle involved in such accident or collision, in the same manner and upon the same notice as hereinbefore provided in the case of process or summons upon the nonresident owner or nonresident operator of such motor vehicle. When such process or summons is served, made or had against the nonresident executor or administrator or such nonresident owner or such nonresident operator of such motor vehicle involved in such accident or collision, it shall be deemed sufficient service of such summons or process to give any court in this state in which such action may be filed, in accordance with the provisions of the statutes of the State of Mississippi, jurisdiction over the cause of action and over such nonresident executor or administrator of such nonresident owner or operator of such motor vehicle insofar as such cause of action is involved.

The provisions of this section shall likewise apply to any person who is a nonresident at the time any action or proceeding is commenced against him, even though said person was a resident at the time any action or proceeding accrued against him.

HISTORY: Codes, 1942, § 9352-61; Laws, 1938, chs. 148, 345; Laws, 1946, ch. 266, § 61; Laws, 1952, ch. 265, § 1; Laws, 1954, ch. 299, §§ 1, 2; Laws, 1958, ch. 262; Laws, 1964, ch. 376, §§ 1-4; Laws, 1978, ch. 378, § 2; Laws, 1991, ch. 443, § 1, eff from and after July 1, 1991.

Cross References — For another section derived from same 1942 code section, see § 11-11-13.

Service of process on one carrying on business in state by or through a trustee or attorney in fact, see § 13-3-41.

Service of process when defendant is nonresident doing business in the state, see § 13-3-57.

Service of process upon nonresident operating a vessel or motorboat on any of the state's waters, see § 59-21-161.

Service of process on nonresident carnivals, circuses, fairs, and similar exhibitions, see §§ 75-75-1 to 75-75-19.

Service of process upon carnivals, circuses, and fairs doing business in the state but not permanently domiciled therein, see §§ 75-75-1 et seq.

Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

Circuit court filing and service requirements for pleadings and motions, see Miss. Uniform Rule of Circuit and County Court Practice 2.06.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application, generally.
2. Persons within purview of statute.
3. Giving of notice.
4. Quashal of service.
5. Decisions under former laws.

1. Construction and application, generally.

Miss. Code Ann. § 13-3-63 is not the exclusive method by which nonresident motorists have to be served because § 13-3-63 merely provides an alternative method to serve a particular class of out-of-state defendants; even if the statute provided an exclusive method of service, it would conflict with Miss. R. Civ. P. 4. Bloodgood v. Leatherwood, 25 So. 3d 1047, 2010 Miss. LEXIS 25 (Miss. 2010).

Where plaintiffs delivered copies of a summons and complaint to the Mississippi Secretary of State who in turn sent the documents to a nonresident motorist by certified mail, restricted delivery, but the documents were returned to the Secretary as unclaimed, such service was insufficient to permit entry of a default judgment against the nonresident; despite case law indicating that service was complete upon delivery to the Secretary, Miss. Code Ann. § 13-3-63 clearly stated that judgment could not be entered against the nonresident until the return receipt was filed with the court, indicating that the nonresident either received or refused delivery of the documents. Arceneaux v. Davidson, 325 F. Supp. 2d 742, 2004 U.S. Dist. LEXIS 13333 (S.D. Miss. 2004).

Circuit Court properly ordered examination of judgment debtor and production of documents in county where suit was filed, where judgment debtor had waived its right to argue that it could not be found in that county, and thus statute concerning examination of judgment debtor by judgment creditor was construed consistently with venue already established for trial of action. H & W Transfer & Cartage Service, Inc. v. Griffin, 511 So. 2d 895, 1987 Miss. LEXIS 2610 (Miss. 1987).

The Federal Motor Carrier Act § 221(c), which provides that every motor carrier shall file in each state in which it operates a designation of a person to receive service on its behalf, does not preempt § 13-3-63 and service may be made upon a nonresident motor carrier under either statute. Trailer Express, Inc. v. Gammill, 403 So. 2d 1292, 1981 Miss. LEXIS 2189 (Miss. 1981).

Where the notice of service of a nonresident corporation was delivered to the president of the corporation in accord with statutory requirements, and an interlocutory default judgment was entered upon failure of the defendant to answer, the default judgment could not be set aside on the grounds that the president of the corporation mislaid the notice due to anxiety over his wife's recent death. Western Chain Co. v. Brownlee, 317 So. 2d 418, 1975 Miss. LEXIS 1758 (Miss. 1975).

The jurisdiction of the court under this statute is not restricted to suits by Mississippi residents, and the circuit court had jurisdiction over a suit arising out of an accident which occurred in Mississippi even though the suit did not involve the interests or rights of any resident of Mississippi. Vick v. Cochran, 316 So. 2d 242, 1975 Miss. LEXIS 1705 (Miss. 1975).

Where default judgment in non-resident motorist case was entered on the first day of a scheduled two week return term, and, upon learning of decision, counsel for defendants promptly filed motion to set aside default judgment in which they set forth a meritorious defense, judgment should have been set aside and the case set for trial on its merits either immediately or on a day certain within the remainder of the term. Martin v. Palmertree, 312 So. 2d 447, 1975 Miss. LEXIS 1645 (Miss. 1975).

Under Code 1942, § 1438, providing that service of process made upon the secretary of state shall be made in the same manner and by the same procedure and with the same force and effect as is provided by the nonresident motorist statute as amended and supplemented, service can be made pursuant to a subsequently inserted provision of the nonresident motorist statute, Code 1942, § 9352-61, so as to permit service upon any person who is a nonresident at the time the action is filed, even though at the time of the incident giving rise to the action, such person was a resident of Mississippi. McKnight v. Dyer, 331 F. Supp. 343, 1971 U.S. Dist. LEXIS 12274 (N.D. Miss. 1971).

This section [Code 1942, § 9352-61] is strictly construed and the provisions thereof must be followed to give the court jurisdiction over a nonresident. State Farm Mut. Auto. Ins. Co. v. Stewart, 209 So. 2d 438, 1968 Miss. LEXIS 1448 (Miss. 1968).

This section [Code 1942, § 9352-61] reflects the legislature's intent to create a service of process tantamount for all purposes to personal service. Ellis v. Milner, 194 So. 2d 232, 1967 Miss. LEXIS 1406 (Miss. 1967).

This section [Code 1942, § 9352-61] has the purpose of placing a nonresident motorist summoned under it on a parity with a resident in all respects, it requires the nonresident using state highways to consent to service of process upon the secretary of state, it puts nonresidents on the same footing as residents in litigation of accidents growing out of the use of state highways, and they have equal procedural rights with residents once the prescribed service of process has been effected. Ellis v. Milner, 194 So. 2d 232, 1967 Miss. LEXIS 1406 (Miss. 1967).

The term "personal representative" as used in this section [Code 1942, § 9352-61] is the equivalent of "legal representative," and is intended to include persons such as the administrator or executor of a nonresident deceased motorist. Hill v. James, 252 Miss. 501, 175 So. 2d 176, 1965 Miss. LEXIS 1126 (Miss. 1965).

A Mississippi court does not acquire jurisdiction of the nonresident widow and minor children of a deceased out-of-state motorist sued in their individual capacities under the survival provisions of this section [Code 1942, § 9352-61] which apply only to the administrator, executor, or other legal representative of the decedent. Hill v. James, 252 Miss. 501, 175 So. 2d 176, 1965 Miss. LEXIS 1126 (Miss. 1965).

This provision, being in derogation of the common law, should be strictly construed. Nationwide Mut. Ins. Co. v. Tillman, 249 Miss. 141, 161 So. 2d 604, 1964 Miss. LEXIS 383 (Miss. 1964).

The basic purposes of the statute are to subject to the jurisdiction of the Mississippi court nonresidents concerned in the operation of motor vehicles in Mississippi, in order that its citizens may assert in its courts any proper claims against such persons, and to afford a nonresident defendant the opportunity to adequately defend an accident suit. Nationwide Mut. Ins. Co. v. Tillman, 249 Miss. 141, 161 So. 2d 604, 1964 Miss. LEXIS 383 (Miss. 1964).

A garnished liability insurer has the burden of disproving that the person served was the insured. Nationwide Mut. Ins. Co. v. Tillman, 249 Miss. 141, 161 So. 2d 604, 1964 Miss. LEXIS 383 (Miss. 1964).

This is a procedural statute, remedial in nature, and as such to be given a liberal construction. Stroo v. Farmer, 200 F. Supp. 344, 1961 U.S. Dist. LEXIS 2899 (S.D. Miss. 1961).

Where a truck from another state which had carried a load of hay to a Mississippi destination was, at the time of the accident, standing in a barn on private property while the driver was still in his seat and the engine was running, this section [Code 1942, § 9352-61] applied regardless of whether the wheels of the truck were turning or not. Stroo v. Farmer, 200 F. Supp. 344, 1961 U.S. Dist. LEXIS 2899 (S.D. Miss. 1961).

The purpose of this section [Code 1942, § 9352-61] is to subject to the jurisdiction of the Mississippi courts nonresidents concerned in the operation of automobiles within the state within the terms of the statute, so that its citizens may assert as against such persons their claims in local courts. Tanksley v. Dodge, 181 F.2d 925, 1950 U.S. App. LEXIS 2724 (5th Cir. Miss. 1950).

The word "operation" includes all means and extent of use of the highways of Mississippi which nonresidents may acquire under the terms of the statute, and also any similar manner of use even though the privilege be not obtained precisely in accordance with the general statutory provisions; and, it, therefore, as a basis of acquiring jurisdiction, brings within its reach a nonresident owner in whose behalf the motor vehicle is driven over the Mississippi highways. Tanksley v. Dodge, 181 F.2d 925, 1950 U.S. App. LEXIS 2724 (5th Cir. Miss. 1950).

A distinction is made between "operator" and "driver"; the operator is recognized to be the owner operating the motor vehicle, and while the driver is recognized as also operating, he is the person actually driving at any given time. Tanksley v. Dodge, 181 F.2d 925, 1950 U.S. App. LEXIS 2724 (5th Cir. Miss. 1950).

2. Persons within purview of statute.

In a matter arising out of a high speed chase, which allegedly resulted in decedents' deaths, neither an Alabama county or that county's sheriff from Alabama entered upon the highways of Mississippi, involving themselves in efforts to stop the fleeing felons, or in any other way subjected themselves to jurisdiction under Miss. Code Ann. § 13-3-63; therefore, the supreme court proceeded with a long-arm analysis to determine if jurisdiction could be conferred upon them under the Mississippi long-arm statute, Miss. Code Ann. § 13-3-57, and the supreme court found no minimum contacts, so the county and the sheriff were not subject to personal jurisdiction in Mississippi. City of Cherokee v. Parsons, 944 So. 2d 886, 2006 Miss. LEXIS 583 (Miss. 2006).

City police officer and deputy sheriff from Alabama, who were involved in a high-speed chase in Mississippi that allegedly resulted in the decedents' death, separately subjected themselves to the personal jurisdiction of Mississippi courts for actions arising out of accidents that occurred in Mississippi. City of Cherokee v. Parsons, 944 So. 2d 886, 2006 Miss. LEXIS 583 (Miss. 2006).

A nonresident owner of an automobile who operates it, or causes it to be operated by another, over the highways of the state of Mississippi, subjects himself, within the terms of the statute, to service of process which is sufficient to require him to defend a suit upon the merits. Tanksley v. Dodge, 181 F.2d 925, 1950 U.S. App. LEXIS 2724 (5th Cir. Miss. 1950).

Nonresident seller of automobiles who procured drivers, as purchaser's agent, to deliver cars sold to purchaser residing in another state was neither operator nor driver within this section [Code 1942, § 9352-61]; and, therefore, he was not subject to substituted service of process in death action resulting from an accident involving one of the cars on a Mississippi highway. Tanksley v. Dodge, 181 F.2d 925, 1950 U.S. App. LEXIS 2724 (5th Cir. Miss. 1950).

3. Giving of notice.

Circuit court erred in dismissing a driver's personal injury complaint with prejudice because the driver exhibited good cause for not timely serving process on the insured where the record clearly showed that over a period of almost two years, the driver unsuccessfully attempted to locate the insured, the Secretary of State attempted to forward the summons to the insured, but it was returned unclaimed, the insured could not be located by the driver, the courts, or his own insurance carrier, and the circuit court failed to consider that the statute of limitations could be tolled. Darville v. Mejia, 184 So. 3d 312, 2016 Miss. App. LEXIS 3 (Miss. Ct. App. 2016).

In a tort action arising out of a motor vehicle accident, a nonresident defendant was properly served since (1) the plaintiffs complied with § 13-3-63 by serving process on the secretary of state, providing the address given by the defendant to law enforcement officials on the date of the accident, and (2) the return receipt attached to the defendant's motion to dismiss, showing that the parcel was sent to the motorist from the office of the secretary of state, constituted proof that the secretary of state complied with the mailing requirement. Wesley v. Mississippi Transp. Comm'n, 857 F. Supp. 523, 1994 U.S. Dist. LEXIS 10036 (S.D. Miss. 1994).

A nonresident defendant was not entitled to dismissal of an action arising from a motor vehicle accident based on the provision of § 13-3-63 which requires that notice of service of process on the secretary of state actually be delivered to the nonresident defendant, although he did not concede that he had received a copy of the summons and complaint, where he had actual knowledge of the commencement of the suit, the basis of the suit, and the identity of the other defendants in the action. Wesley v. Mississippi Transp. Comm'n, 857 F. Supp. 523, 1994 U.S. Dist. LEXIS 10036 (S.D. Miss. 1994).

Notice to a nonresident motorist by one of the three methods provided by this section [Code 1942, § 9352-61] is essential to confer jurisdiction upon the local courts. State Farm Mut. Auto. Ins. Co. v. Stewart, 209 So. 2d 438, 1968 Miss. LEXIS 1448 (Miss. 1968).

This section [Code 1942, § 9352-61] provides three methods for the service of process upon a nonresident, and it is essential to due process that a nonresident defendant be given notice of the action against him in accordance with the provisions of the section. State Farm Mut. Auto. Ins. Co. v. Stewart, 209 So. 2d 438, 1968 Miss. LEXIS 1448 (Miss. 1968).

Where it appears conclusively that the notice intended for a nonresident motorist was forwarded to an address which did not exist, that there was no return receipt from the defendant, no evidence of refusal of the letter by him, nor any evidence of actual delivery of the process to him, a default judgment entered by the court against such defendant was void. State Farm Mut. Auto. Ins. Co. v. Stewart, 209 So. 2d 438, 1968 Miss. LEXIS 1448 (Miss. 1968).

The general rule is that substituted service of process is complete when made upon the designated state official, and therefore receipt by the nonresident defendant of the specified notice of such service is not the determinative date for completion of process. Ellis v. Milner, 194 So. 2d 232, 1967 Miss. LEXIS 1406 (Miss. 1967).

Where there was a passage of over a month between the date of service on the secretary of state and the rendition of a default judgment against a nonresident defendant, and he had no one file pleadings for him in the court or make any other representation, the trial court did not abuse its discretion in entering a default judgment. Ellis v. Milner, 194 So. 2d 232, 1967 Miss. LEXIS 1406 (Miss. 1967).

Service under this section [Code 1942, § 9352-61] by mailing a summons to defendant at his correct address is good although another address is stated in the summons, and the name given therein was an alias. Nationwide Mut. Ins. Co. v. Tillman, 249 Miss. 141, 161 So. 2d 604, 1964 Miss. LEXIS 383 (Miss. 1964).

4. Quashal of service.

Upon consideration of a motion to quash service of summons in a death action growing out of an automobile accident, the question is whether the allegations of the complaint and the facts of the case as disclosed show that the defendant brought before the court is such a defendant as is subjected by the statute to substituted service of process. Tanksley v. Dodge, 181 F.2d 925, 1950 U.S. App. LEXIS 2724 (5th Cir. Miss. 1950).

5. Decisions under former laws.

Under the Alabama nonresident motorist statute, the Alabama court had jurisdiction where both parties were nonresidents and the judgment is entitled to full faith and credit in Mississippi. Burns v. Godwin, 211 Miss. 310, 51 So. 2d 486, 1951 Miss. LEXIS 357 (Miss. 1951).

The constitutionality of this statute is affirmed. Bouchillon v. Jordan, 40 F. Supp. 354, 1941 U.S. Dist. LEXIS 2937 (D. Miss. 1941).

The fact that no venue is provided in the act itself does not render the act as so unreasonable as to offend any part of the constitution. Bouchillon v. Jordan, 40 F. Supp. 354, 1941 U.S. Dist. LEXIS 2937 (D. Miss. 1941).

In cases not within the operation of Chapter 246 of the Act of 1940 fixing the venue in the county where the cause of action accrues, the proper venue of an action commenced as provided in this statute is the county where the secretary of state resides. Bouchillon v. Jordan, 40 F. Supp. 354, 1941 U.S. Dist. LEXIS 2937 (D. Miss. 1941).

RESEARCH REFERENCES

ALR.

Constitutionality and construction of statute authorizing constructive or substituted service of process on, and continuation of pending action against, foreign representative of deceased nonresident driver of motor vehicle, arising out of accident occurring in state. 18 A.L.R.2d 544.

Venue of action against nonresident motorist served constructively under statute. 38 A.L.R.2d 1198.

What is "motor vehicle" or the like within statute providing for constructive or substituted service of process on nonresident motorists. 48 A.L.R.2d 1283.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists. 53 A.L.R.2d 1164.

Who subject to substituted service of process under statutes providing for such service on nonresident motorists. 53 A.L.R.2d 1164.

Doctrine of forum non conveniens: assumption or denial of jurisdiction in action between nonresident individuals based upon tort occurring within forum state. 92 A.L.R.3d 797.

Am. Jur.

8 Am. Jur. 2d (Rev), Automobiles and Highway Traffic §§ 742- 771.

CJS.

60A C.J.S., Motor Vehicles §§ 1122, 1123 et seq.

§§ 13-3-65 and 13-3-67. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-3-65. [Codes, Hutchinson's 1848, ch. 58, art. 1 (43); 1857, ch. 61, art. 73; 1871, § 715; 1880, § 1535; 1892, § 3437; 1906, § 3936; Hemingway's 1917, § 2943; 1930, § 2989; 1942, § 1870]

§ 13-3-67. [Codes, Hutchinson's 1848, ch. 58, art. 1 (95); 1857, ch. 61, art. 69; 1871, § 711; 1880, § 2285; 1892, § 3438; 1906, § 3937; Hemingway's 1917, § 2944; 1930, § 2990; 1942, § 1871]

Editor's Notes — Former § 13-3-65 provided for issuance, execution, and return of a writ of scire facias.

Former § 13-3-67 stated that any process appearing to be in other respects duly served, shall be good, though not directed to any officer.

§ 13-3-69. Process not void for certain defects.

If any matter required to be inserted in or indorsed on any process be omitted, such process shall not on that account be void, but it may be set aside as irregular, or amended on such terms as the court shall deem proper. The amendment may be made upon an application to set aside or quash the writ.

HISTORY: Codes, 1857, ch. 61, art. 70; 1871, § 712; 1880, § 2286; 1892, § 3439; 1906, § 3938; Hemingway's 1917, § 2945; 1930, § 2991; 1942, § 1873.

Cross References — Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Defects not amendable.

1. In general.

A search warrant delivered to the sheriff "to any lawful officer of said county" is not void. Such process is amendable. Matthews v. State, 134 Miss. 807, 100 So. 18, 1924 Miss. LEXIS 327 (Miss. 1924).

Where a deputy clerk issues an attachment writ in the name of the clerk, without affixing his own name as deputy, the writ may be amended. Wimberly v. Boland, 72 Miss. 241, 16 So. 905, 1894 Miss. LEXIS 121 (Miss. 1894).

The failure of the circuit clerk to affix his signature to a venire facias is merely an irregularity amendable by motion and a motion to quash dispenses with amendment where the writ has already served its purpose. Hale v. State, 72 Miss. 140, 16 So. 387, 1894 Miss. LEXIS 88 (Miss. 1894).

A writ of seizure (under Laws 1876) which commanded a seizure of agricultural products, but named no defendant and contained no personal summons, was not void. Dogan v. Bloodworth, 56 Miss. 419, 1879 Miss. LEXIS 140 (Miss. 1879).

Where the name of a defendant is changed both in the declaration and writ by the plaintiff, the writ will not for that reason be quashed. Maxey v. Strong, 53 Miss. 280, 1876 Miss. LEXIS 65 (Miss. 1876).

Where the process is made returnable to the wrong term of the court, the defect may be amended on motion and the appearance of the party to the motion obviates the necessity of the amendment. Harrison v. Agricultural Bank, 10 Miss. 307, 1844 Miss. LEXIS 148 (Miss. 1844).

2. Defects not amendable.

Search warrant issued in connection with a prosecution for violation of intoxicating liquor laws with no return day named therein is void and cannot be amended. Buxton v. State, 205 Miss. 692, 39 So. 2d 310, 1949 Miss. LEXIS 460 (Miss. 1949).

A search warrant dated only "this the 12th day of Johnson, 194-" was void and not subject to amendment by permission of the court. Johnson v. State, 202 Miss. 233, 31 So. 2d 127, 1947 Miss. LEXIS 264 (Miss. 1947).

An execution issued to the sheriff of another county by the clerk of a circuit court on a duly enrolled judgment of a justice of the peace of his county, returnable before such a justice, is void and not amendable under this section [Code 1942, § 1873]. Smith v. Mixon, 73 Miss. 581, 19 So. 295, 1895 Miss. LEXIS 161 (Miss. 1895).

A summons issued during a term of court returnable instanter is a nullity and therefore is not amendable under this section [Code 1942, § 1873]. Joiner v. Delta Bank, 71 Miss. 382, 14 So. 464, 1893 Miss. LEXIS 187 (Miss. 1893).

RESEARCH REFERENCES

ALR.

Mistake or error in middle initial or middle name of party as vitiating or invalidating civil process, summons, or the like. 6 A.L.R.3d 1179.

Am. Jur.

62 Am. Jur. 2d (Rev), Process §§ 60, 61.

Amendment of process, 20 Am. Jur. Pl & Pr Forms (Rev), Process, Forms 21-53.

§ 13-3-71. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1942, § 1872; Laws, 1936, ch. 244; Laws, 1956, ch. 238; Laws, 1966, ch. 355, § 1; Laws 1981, ch. 358, § 1]

Editor's Notes — Former § 13-3-71 authorized a defendant to waive process and enter an appearance without pleading.

§ 13-3-73. Plaintiff's options when sheriff kept off by force.

When the sheriff shall return, on any process, that he has been kept off by force, the plaintiff may issue an alias or pluries, as the case may be, or he may proceed in the action against the defendant as if the process had been returned executed.

HISTORY: Codes, Hutchinson's 1848, ch. 58, art. 1 (41); 1857, ch. 61, art. 71; 1871, § 713; 1880, § 2287; 1892, § 3440; Laws, 1906, § 3939; Hemingway's 1917, § 2946; Laws, 1930, § 2992; Laws, 1942, § 1874.

Cross References — Duty of the sheriff to execute and return process, see § 19-25-37.
Criminal offense of resisting authorized person attempting to serve or execute process, see § 97-9-75.
Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

RESEARCH REFERENCES

Am. Jur.
62 Am. Jur. 2d, Process §§ 54, 58.

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Rules 4, 5, 7-11, and 15. 52 Miss. L. J. 3, March 1982.

§ 13-3-75. Return of alias where first writ served.

If any process be executed, and for want of a return thereof other process be issued, the sheriff or other officer shall not execute the subsequent process, but shall return the first process by him executed, if it be in his possession, and, if it be not in his possession, he shall return the subsequent process, with an indorsement of the execution of the first process, and how it was executed, on which there shall be the same proceedings as if the said first process had been duly returned.

HISTORY: Codes, Hutchinson's 1848, ch. 58, art. 1 (42); 1857, ch. 61, art. 72; 1871, § 714; 1880, § 2288; 1892, § 3441; 1906, § 3940; Hemingway's 1917, § 2947; 1930, § 2993; 1942, § 1875.

Cross References — Suing out of an alias when the defendant shall not be found, see § 13-3-15.
Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

RESEARCH REFERENCES

Am. Jur.
30 Am. Jur. 2d (Rev), Executions §§ 120- 122.
62 Am. Jur. 2d, Process §§ 250, 254 et seq.

CJS.
72 C.J.S., Process §§ 150–152 et seq.

§ 13-3-77. Process may be executed by an officer out of his county.

The sheriff or other proper officer of a county may execute process out of his county, in case the person to be served or property to be seized was in the officer's county when the writ was received, but had removed or been carried into another county before its execution. In such case the officer shall state the facts in his return, and the writ and return shall have the same effect as if the process had been returned not executed and a testatum or duplicate writ had been issued to and executed and returned by an officer of the county where served.

HISTORY: Codes, 1892, § 3500; 1906, § 3998; Hemingway's 1917, § 3005; 1930, § 3051; 1942, § 1939.

Cross References — Duty of the sheriff to execute and return process, see § 19-25-37.

Rule governing the service of summons, summons by publication, return of process, and the like, see Miss. R. Civ. P. 4.

RESEARCH REFERENCES

ALR.
Sheriff's deed as prima facie evidence of return. 36 A.L.R. 1001, 108 A.L.R. 672.

§ 13-3-79. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1880, § 2291; 1892, § 3443; 1906, § 3942; Hemingway's 1917, § 2949; 1930, § 2995; 1942, § 1877; Laws, 1986, ch. 459, § 26]

Editor's Notes — Former § 13-3-79 specified when persons other than sheriff or coroner could be appointed by a judge to execute process.

§ 13-3-81. When justice court judge may execute process.

If there be no sheriff in any county, or if good cause of exception exists against him, by reason of his being a party to or interested in the suit, or otherwise, the process may be directed to any justice court judge of the county, who shall be bound to execute the same, and to do all things which the sheriff would be bound to do if no exception existed against him. In case of any neglect or breach of such duty, the justice court judge shall be liable to the same penalties and subject to the same actions and remedies as sheriffs are subject to in like cases.

HISTORY: Codes, 1857, ch. 61, art. 75; 1871, § 699; 1880, § 2290; 1892, § 3445; 1906, § 3944; Hemingway's 1917, § 2951; 1930, § 2997; 1942, § 1879; Laws, 1986, ch. 459, § 27, eff from and after July 1, 1986.

Cross References — Execution of process issued by the justice of the peace, see § 11-9-107.

Power of the justice of the peace to appoint person to execute process when an authorized person cannot be had in time, see § 11-9-109.

Authority of the justice of the peace to issue a warrant for the arrest of an offender coming into the county, see § 99-3-21.

JUDICIAL DECISIONS

1. In general.

Process can only be served by an officer authorized by statute. This statute, authorizing the service of process in certain cases by justices of the peace, does not empower a justice of the peace to serve a summons issued by himself. McDugle v. Filmer, 79 Miss. 53, 29 So. 996, 1901 Miss. LEXIS 24 (Miss. 1901).

Neither an interested sheriff nor his deputy, whether general or special, can serve the writ. Dyson v. Baker, 54 Miss. 24, 1876 Miss. LEXIS 5 (Miss. 1876).

Process addressed to an officer interested in the case will be quashed on timely application. McLeod v. Harper, 43 Miss. 42, 1870 Miss. LEXIS 3 (Miss. 1870).

RESEARCH REFERENCES

Am. Jur.

62 Am. Jur. 2d (Rev), Process §§ 122, 123, 127- 130.

CJS.

72 C.J.S., Process §§ 33-38.

§ 13-3-83. Service of notices, summonses, subpoenas, orders, pleadings, motions, etc.

All notices provided for by law appertaining to actions, suits or proceedings of any kind in any court shall be served and returned by the sheriff or any constable of the county, or the marshal of any city, town or village therein in which such notices are to be served, to whom such notices may be delivered for that purpose. However, service of summonses and subpoenas in all courts except justice court shall be governed by the Mississippi Rules of Civil Procedure and in every instance, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal and similar paper shall be served and filed in accordance with the provisions of the Mississippi Rules of Civil Procedure.

HISTORY: Codes, 1880, § 2289; 1892, § 3442; 1906, § 3941; Hemingway's 1917,

§ 2948; 1930, § 2994; 1942, § 1876; Laws, 1971, ch. 353, § 1; Laws, 1991, ch. 573, § 99; Laws, 1992, ch. 427 § 2, eff from and after passage (approved May 4, 1992).

Cross References — Notice served on attorney of party being as valid and effectual as if served on party himself, see § 11-49-11.

Duty of the sheriff to execute all orders and decrees of the circuit and chancery courts directed to him to be executed, see § 19-25-35.

JUDICIAL DECISIONS

1. In general.

A bill of complaint was erroneously dismissed for the complainant's failure to answer interrogatories within 30 days after service thereof, where the complainant had not been served with notice of the filing of the interrogatories by a sheriff or other legal officer. Robinson v. Hemphill, 229 So. 2d 827, 1969 Miss. LEXIS 1257 (Miss. 1969).

List of special venire and copy of the indictment need not be served on accused by sheriff. Ivey v. State, 154 Miss. 60, 119 So. 507, 1928 Miss. LEXIS 198 (Miss. 1928).

Service under this section [Code 1942, § 1876] must be made by the sheriff or other lawful officer. Merchants' Grocery Co. v. Merchants' Trust & Banking Co., 119 Miss. 99, 80 So. 494, 1918 Miss. LEXIS 17 (Miss. 1918).

RESEARCH REFERENCES

CJS.

72 C.J.S., Process §§ 43–46, 70–74.

§ 13-3-85. Notice by summons of motions against officers for neglect of duty.

In all cases where motions are made against officers, or officers and their sureties, for neglect of official duty under any law, five days' notice shall be given by summons, to be served as in other cases, and this shall apply to motions against the personal representative of a deceased officer.

HISTORY: Codes, 1892, § 3444; 1906, § 3943; Hemingway's 1917, § 2950; 1930, § 2996; 1942, § 1878.

Cross References — Power of circuit court to hear and determine motions against officers for money collected but not paid on demand to party entitled thereto, see § 9-7-89.

Summary proceeding on motion by client against attorney for failing to pay over money received on client's behalf, see § 11-49-3.

RESEARCH REFERENCES

Am. Jur.

62 Am. Jur. 2d, Process §§ 99, 102.

CJS.

72 C.J.S., Process § 156.

§ 13-3-87. Return of officer may be questioned by parties.

The return of the officer serving any process may, in the same action, be shown to be untrue by either of the parties, but the officer himself shall not be permitted to question its truth.

HISTORY: Codes, 1857, ch. 61, art. 65; 1871, § 707; 1880, § 1533; 1892, § 3446; 1906, § 3945; Hemingway's 1917, § 2952; 1930, § 2998; 1942, § 1880.

JUDICIAL DECISIONS

1. In general.

No reversible error was found in trial judge excluding testimony directed toward identity of person who actually served summons; one acting generally as deputy sheriff, under written appointment from sheriff, although not having qualified according to law, is de facto officer and between third parties his actions are valid; and, in absence of proof to contrary, it is presumed that person whose name was appended to return on writ as special deputy was duly authorized as such. Pointer v. Huffman, 509 So. 2d 870, 1987 Miss. LEXIS 2583 (Miss. 1987).

A motion by plaintiff to permit an amendment to the return of service of process to show that the person served was defendant's designated agent for accepting service of process was improperly denied where the testimony of deputy sheriff who executed the summons was competent to amend his return for such purposes and where such an amendment would be a ministerial act permitted by this section. Taylor v. F. & C. Contracting Co., 362 So. 2d 625, 1978 Miss. LEXIS 2118 (Miss. 1978).

Where a judgment by default has been rendered at the return term upon a return of personal service of a summons apparently regular such judgment may, at a subsequent term, be vacated by a motion showing that the return was false and that the summons had only been served four days before its return day, and the court will direct an issue of fact to try the truth of the return. If the motion be sustained, the suit will be a pending one. Meyer Bros. v. Whitehead, 62 Miss. 387, 1884 Miss. LEXIS 90 (Miss. 1884).

The statute clearly contemplates that the party objecting to the return in a pending action should plead the facts in the nature of a plea in abatement. A mere motion to set aside should be overruled and testimony thereon refused. Mayfield v. Barnard, 43 Miss. 270, 1870 Miss. LEXIS 36 (Miss. 1870).

RESEARCH REFERENCES

ALR.

Sufficiency of jurat or certificate to affidavit for publication. 1 A.L.R. 1573, 116 A.L.R. 589.

Am. Jur.

62 Am. Jur. 2d, Process §§ 264 et seq.

§ 13-3-89. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1892, § 3447; 1906, § 3946; Hemingway's 1917, § 2953; 1930, § 2999; 1942, § 1881]

Editor's Notes — Former § 13-3-89 provided that when a summons or citation was quashed on motion of defendant, the case could be continued for the term, but that the defendant was deemed to have entered his appearance.

§ 13-3-91. Reversal, on appeal by defendant, for want of service or defective service as an appearance.

Where a judgment or decree is reversed on appeal taken by defendant for the want of service, or because of defective service of process, a new summons or citation need not be issued or served, but the defendant shall, without such process or service, be presumed to have entered his appearance to the cause in the court from which the appeal was taken when the mandate shall be filed therein.

HISTORY: Codes, 1892, § 3448; 1906, § 3947; Hemingway's 1917, § 2954; 1930, § 3000; 1942, § 1882.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

Similar legislation in Texas, forbidding the defendant to come into court and challenge the validity of service upon him in a personal action, without surrendering himself to the jurisdiction of the court, has been held not to deprive him of liberty or property within the prohibition of the Fourteenth Amendment to the Federal Constitution. York v. Texas, 137 U.S. 15, 11 S. Ct. 9, 34 L. Ed. 604, 1890 U.S. LEXIS 2057 (U.S. 1890); Kauffman v. Wootters, 138 U.S. 285, 11 S. Ct. 298, 34 L. Ed. 962, 1891 U.S. LEXIS 2082 (U.S. 1891).

2. Construction and application.

Following a successful appeal from an order overruling a motion to set aside a final decree because of defective process, the defendant is presumed to have entered her appearance and no new process is necessary. High v. High, 186 So. 2d 196, 1966 Miss. LEXIS 1292 (Miss. 1966).

Defendant's appeal from justice court and appearance in circuit court and motion to quash process and dismiss for want of jurisdiction constituted appearance and waiver of absence of process. Turner v. Williams, 162 Miss. 258, 139 So. 606, 1932 Miss. LEXIS 312 (Miss. 1932).

An appeal of a case from the justice of the peace court to the circuit court gives the circuit court jurisdiction of the defendant. Illinois C. R. Co. v. Swanson, 92 Miss. 485, 46 So. 83, 1908 Miss. LEXIS 214 (Miss. 1908).

RESEARCH REFERENCES

ALR.

Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction. 38 A.L.R.2d 114.

Am. Jur.

4 Am. Jur. 2d, Appearance §§ 2-4.

2 Am. Jur. Pl & Pr Forms (Rev), Appearance, Forms 6, 7, 9, 11, 12, 14.

CJS.

6 C.J.S., Appearances § 12.

§ 13-3-93. Subpoenas for witnesses.

The first process, in all civil actions, and in all courts, to compel the attendance of a witness, shall be a subpoena, the procedural aspects of which shall be governed by the Mississippi Rules of Civil Procedure.

HISTORY: Codes, Hutchinson's 1848, ch. 60, art. 1 (102); 1857, ch. 61, art. 194; 1871, § 761; 1880, § 1586; 1892, § 3449; 1906, § 3948; Hemingway's 1917, § 2955; 1930, § 3001; 1942, § 1883; Laws, 1991, ch. 573, § 100, eff from and after July 1, 1991.

Cross References — Power of the chancery court to issue subpoenas for the attendance of witnesses, see § 9-5-85.

Power of the justice of the peace to issue subpoenas for the attendance of witnesses, see § 11-9-115.

Power of arbitrators in certain arbitration proceedings to subpoena witnesses, see § 11-15-117.

Issuance of subpoenas in habeas corpus proceedings, see § 11-43-39.

Summons generally, see § 13-3-5.

Power of the foreman of a grand jury to issue subpoenas for attendance of witnesses, see § 13-5-63.

Amounts of witness fees, see § 25-7-47.

Summoning witnesses to appear before courts-martial, see § 33-13-321.

Power of banking examiners and commissioner of banking and consumer finance to subpoena witnesses, see § 81-1-85.

For another section derived from same 1942 code section, see § 99-9-11.

Power of a conservator of the peace, in examinations had before him for offenses, to issue subpoenas, see § 99-15-9.

Right to subpoena witnesses under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-23.

For the rule governing subpoenas, see Miss. R. Civ. P. 45.

Procedural requirements for requests for subpoenas in circuit courts, see Miss. Uniform Rule of Circuit and County Court Practice 2.01.

JUDICIAL DECISIONS

1. In general.

A witness attending court cannot claim attendance from the opposite party who loses the suit unless he has been subpoenaed. Yazoo & M. V. R. Co. v. Richardson, 104 Miss. 575, 61 So. 649, 1913 Miss. LEXIS 66 (Miss. 1913).

RESEARCH REFERENCES

Am. Jur.

81 Am. Jur. 2d, Witnesses §§ 6 et seq.

CJS.

98 C.J.S., Witnesses §§ 21-66.

§§ 13-3-95 through 13-3-101. Repealed.

Repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 13-3-95. [Codes, Hutchinson's 1848, ch. 60, art. 1 (119); 1857, ch. 61, art. 195; 1871,§ 762; 1880, §§ 1587, 1616; 1892, § 3450; 1906, § 3949; Hemingway's 1917, § 2956; 1930, § 3002; 1942, § 1884.]

§ 13-3-97. [Codes, 1857, ch. 61, art. 195; 1871, § 763; 1880, § 1587; 1892, § 3451; 1906, § 3950; Hemingway's 1917, § 2957; 1930, § 3003; 1942, § 1885.]

§ 13-3-99. [Codes, 1880, § 1594; 1892, § 3452; 1906, § 3951; Hemingway's 1917, § 2958; 1930, § 3004; 1942, § 1886; Laws, 1936, ch. 250.]

§ 13-3-101. [Codes, 1857, ch. 61, art. 196; 1871, § 764; 1880, § 1588; 1892, § 3453; 1906, § 3952; Hemingway's 1917, § 2959; 1930, § 3005; 1942, § 1887.]

Editor's Notes — Former § 13-3-95 related to issuance of subpoena requiring attendance before master, commissioner, referee, or surveyor.

Former § 13-3-97 related to issuance of subpoena for witness to give dispositions for use in other states.

Former § 13-3-99 related to process to compel attendance of witness in certain counties during term.

Former § 13-3-101 related to service of subpoena.

§ 13-3-103. Attachment for non-appearing subpoenaed witness.

If any person subpoenaed as a witness shall fail to appear and attend as required, an attachment shall be issued by order of the court or other authority before which he was subpoenaed to appear, returnable at such time as the court or authority may appoint. The court or authority shall, on ordering the attachment, direct whether the witness shall enter into bond for his appearance, and in what sum, and whether with or without sureties, which bond the sheriff, or other officer by whom the attachment is executed, is authorized to take, payable to the state. In case the witness shall appear in answer to the attachment, the court may discharge him therefrom, on good cause shown, or may require him to enter into recognizance or bond for his appearance until discharged, to testify in the cause. In case the witness shall not appear, in pursuance of his recognizance or bond, the same proceedings shall be had as upon the forfeiture of a recognizance in a criminal case.

HISTORY: Codes, Hutchinson's 1848, ch. 60, art. 1 (121); 1857, ch. 61, art. 197; 1871, § 765; 1880, § 1589; 1892, § 3454; 1906, § 3935; Hemingway's 1917, § 2960; 1930, § 3006; 1942, § 1888.

Cross References — Form of an attachment for a witness issued by a justice of the peace, see § 11-9-121.

Witness not obeying a subpoena served on him in a habeas corpus proceeding, see § 11-43-49.

For another section derived from same 1942 code section, see § 99-9-19.

RESEARCH REFERENCES

Am. Jur.

Attachment of witness for failure to obey subpoena, 25 Am. Jur. Pl & Pr Forms (Rev), Witnesses, Forms 96, 97.

Attachment of witness for failure to obey subpoena, 21 Am. Jur. Pl & Pr Forms, Witnesses, Form 21:738.

CJS.

98 C.J.S., Witnesses §§ 92, 106–112, 128–137, 139.

§ 13-3-105. Subpoenaed witness to attend until discharged; scire facias for defaulters.

Every witness subpoenaed in any case, civil or criminal, shall attend, from day to day, and from term to term without further notice, until discharged by the court or by the party at whose instance he was subpoenaed, and in default thereof he shall be fined by the court not more than Five Hundred Dollars ($500.00), and a scire facias shall issue thereon, requiring him to appear at the next term of the court, to show cause why the fine should not be made absolute. If cause be not then shown, the fine shall be made final. In criminal cases, the court may cause the witnesses on either side to be bound by bond or recognizance to appear and testify until discharged.

HISTORY: Codes, Hutchinson's 1848, ch. 60, art. 1 (103, 105); 1857, ch. 61, arts. 196, 198; 1871, § 766; 1880, §§ 1590, 1591, 1592; 1892, § 3455; 1906, § 3954; Hemingway's 1917, § 2961; 1930, § 3007; 1942, § 1889.

Cross References — For another section derived from same 1942 code section, see § 99-9-21.

JUDICIAL DECISIONS

1. In general.

After the state rested its case in a prosecution for assault and battery with an intent to kill, the district attorney had authority to release a witness subpoenaed by the state, who had not been subpoenaed by the defendant. Nicholson v. State, 230 Miss. 267, 92 So. 2d 654, 1957 Miss. LEXIS 366 (Miss. 1957).

RESEARCH REFERENCES

ALR.

Uniform Act to secure attendance of witnesses from without the state in criminal proceedings. 44 A.L.R.2d 732.

Am. Jur.

Scire facias on judgment against witness failing to obey subpoena, 25 Am. Jur. Pl & Pr Forms (Rev), Witnesses, Form 93.

Writ of scire facias against defaulting witness, 18 Am. Jur. Pl & Pr Forms, Scire Facias, Forms 18:181, 18:182.

§ 13-3-107. Settlement of certain civil suits; notice to be given to subpoenaed witnesses and effect of failure to do so.

If a civil suit shall be settled in vacation, notice thereof shall be given to the witnesses subpoenaed to appear. If such notice is not given, they shall be entitled to the same compensation for their subsequent attendance in pursuance of the subpoena as if the suit had not been settled.

HISTORY: Codes, 1857, ch. 61, art. 196; 1871, § 764; 1880, § 1588; 1892, § 3453; 1906, § 3952; Hemingway's 1917, § 2959; 1930, § 3005; 1942, § 1887.

Cross References — For another section derived from same 1942 code section, see § 99-9-17.

§ 13-3-109. Issuance of process by supreme court and its return.

The Clerk of the Supreme Court shall issue all process which may be ordered to issue by the court or any judge thereof. All process issuing from said court or on the order of any judge thereof, or which may be returnable therein, shall be under the seal of the court, and be signed by the clerk thereof, and may be directed to the sheriff or other proper officer of any county, who shall execute and return the same according to the command thereof. Whenever any such process shall not be executed or not returned, an alias may be issued by the clerk on the application of the person who sued out the former process.

HISTORY: Codes, 1857, ch. 63, art. 28; 1871, § 430; 1880, § 1448; 1892, § 3458; 1906, § 3957; Hemingway's 1917, § 2964; 1930, § 3010; 1942, § 1898; Laws, 1991, ch. 573, § 101, eff from and after July 1, 1991.

Cross References — Filing and service, see Miss. R. App. P. 25.
Substitution of parties, see Miss. R. App. P. 43.

JUDICIAL DECISIONS

1. In general.

Where the landowners, the trustee, and the mortgagee in a deed of trust on property sought to be acquired by eminent domain proceedings were not summoned to appear in the supreme court, that court cannot proceed until they have been properly made parties on appeal. Mississippi State Highway Com. v. Nixon, 253 Miss. 636, 170 So. 2d 631, 1965 Miss. LEXIS 1164 (Miss. 1965).

The appellee must have notice of an appeal to the supreme court. Beasley v. Cottrell, 94 Miss. 253, 47 So. 662, 1908 Miss. LEXIS 22 (Miss. 1908).

RESEARCH REFERENCES

Am. Jur.

62 Am. Jur. 2d (Rev), Process §§ 8, 9.

CJS.

72 C.J.S., Process §§ 6-11.

§ 13-3-111. Time when executions shall be issued.

The clerks of all courts of law or equity, after the adjournment of the court for the term shall, at the request and cost of the owner of the judgment or decree or his attorney, issue executions on all judgments and decrees rendered therein, and place the same in the hands of the sheriff of the county. The sheriff shall effectuate any execution on a judgment. If requested by such owner, they shall issue executions directed to the sheriff of any other county, and shall deliver the same to the owner or his attorney.

HISTORY: Codes, Hutchinson's 1848, ch. 59, art. 9 (4); 1857, ch. 61, art. 265; 1871, § 837; 1880, § 1742; 1892, § 3459; 1906, § 3958; Hemingway's 1917, § 2965;

1930, § 3011; 1942, § 1899; Laws, 1976, ch. 331; Laws, 1990, ch. 408, § 1, eff from and after July 1, 1990.

Cross References — Duty of attorney general to direct the issuing of process necessary to carry into execution judgment in any cause represented by him, see § 7-5-33.

Power of the circuit court to award executions, see § 9-7-91.

Execution on judgment or decree appealed from not being issued when a bond for stay of execution is given, see § 11-51-59.

Power of court clerks to make out executions for unpaid costs, see § 11-53-73.

Execution against collateral to enforce security interest, see § 75-9-501.

Duties of clerks and sheriffs with respect to executions issued on judgments rendered in suits on promissory notes and bills of exchange, see § 75-13-7.

Provisions to effect that procedure on execution shall be as provided by statute, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Bank executed on a summary judgment that was granted against corporation, and two other related actions were still pending; the pending lawsuits were choses in action and subject to a writ of execution, and the procedure selected by the bank, which was the initiation of a sheriff's execution sale against the plaintiffs' choses in action, was entirely appropriate. Citizens Nat'l Bank v. Dixieland Forest Prods., LLC, 935 So. 2d 1004, 2006 Miss. LEXIS 409 (Miss. 2006).

Prevailing party held not entitled to recover witness fees where certificate of allowance was not issued by clerk or demanded by witness during term of court or within five days thereafter, although witness made proper affidavit before clerk. Woodruff v. Bright, 175 Miss. 109, 166 So. 390, 1936 Miss. LEXIS 24 (Miss. 1936).

A justice of the peace cannot purchase property at an execution sale on an execution issued from his court. E. E. Forbes Piano Co. v. Hennington, 98 Miss. 51, 53 So. 777, 1910 Miss. LEXIS 70 (Miss. 1910).

An execution issued to the sheriff of another county by the clerk of a circuit court, on a duly enrolled judgment of a justice of the peace of his county, returnable before such justice, is not authorized by this section (Code 1892, § 3459), but is void. Smith v. Mixon, 73 Miss. 581, 19 So. 295, 1895 Miss. LEXIS 161 (Miss. 1895).

And such writ is not amendable under Code 1892, § 3439 (Code 1942, § 1873), and it is immaterial that the objection thereto was not made prior to a motion for new trial because the failure to object cannot vitalize a void writ. Smith v. Mixon, 73 Miss. 581, 19 So. 295, 1895 Miss. LEXIS 161 (Miss. 1895).

RESEARCH REFERENCES

ALR.

Formal entry or docketing, of judgment as prerequisite to issuance of execution. 65 A.L.R.2d 1162.

Injury to credit standing, reputation, solvency, or profit potential as elements of damage resulting from wrongful execution against business property. 55 A.L.R.3d 911.

Am. Jur.

30 Am. Jur. 2d (Rev), Executions §§ 82 et seq.

General executions, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 31-33.

Special executions, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 41-46.

CJS.

33 C.J.S., Executions §§ 69, 85-88.

§ 13-3-113. Issuance, execution, and return of executions.

Writs of execution shall bear date and be issued in the same manner as original process, and shall be made returnable on the first day of the next term of the court in which the judgment or decree was rendered, if there be fifteen days between the issuance and return thereof, and, if not, on the first day of the term next thereafter. Such execution may be directed to the sheriff or other proper officer of any county, who shall serve and execute the same, and make return thereof to the court in which the judgment or decree was rendered.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (7); 1857, ch. 61, art. 267; 1871, § 839; 1880, § 1743; 1892, § 3460; 1906, § 3959; Hemingway's 1917, § 2966; 1930, § 3012; 1942, § 1900.

Cross References — Time within which execution shall not be issued on judgment of a justice of the peace, see § 11-9-131.

Form of an execution issued on a judgment of a justice of the peace, see § 11-9-133.

Selection by a defendant of exempt personal property where an officer is about to levy an execution or attachment on personal property, see § 85-3-3.

Judgment for personal injury not exceeding $10,000 being exempt from execution, see § 85-3-17.

Issuance of a special writ of execution for the sale of a house, building, structure, or fixture and land, see § 85-7-153.

Executions on judgments rendered against a principal and surety, see § 87-5-13.

Criminal offense of resisting authorized person attempting to serve process, see § 97-9-75.

Provisions to effect that procedure on execution shall be as provided by statute, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

The return of an officer showing the sale of land to a designated person does not transfer a title, it only gives the purchaser the right to demand a deed conveying title. Jones v. Rogers, 85 Miss. 802, 38 So. 742, 1904 Miss. LEXIS 106 (Miss. 1904), overruled, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), writ of error dismissed, 214 U.S. 196, 29 S. Ct. 635, 53 L. Ed. 965, 1909 U.S. LEXIS 1908 (U.S. 1909).

An execution issued to the sheriff of another county by the clerk of a circuit court on a duly enrolled judgment of a justice of the peace of his county is unauthorized. Smith v. Mixon, 73 Miss. 581, 19 So. 295, 1895 Miss. LEXIS 161 (Miss. 1895).

A person is not disqualified to act as deputy sheriff in levying an execution because he is agent for the plaintiff in collecting the judgment and is to receive a commission on the collection. It is error to quash a levy because of such fact. Badley v. Ladd, 70 Miss. 688, 12 So. 832, 1893 Miss. LEXIS 35 (Miss. 1893).

An execution issued seventeen days before the return term, and received by the sheriff ten days after issuance, is not void. Skinner v. Wilson, 61 Miss. 90, 1883 Miss. LEXIS 77 (Miss. 1883); Williamson v. Williamson, 52 Miss. 725, 1876 Miss. LEXIS 284 (Miss. 1876).

An execution issued within five days of a term and made returnable thereto is void. Harris v. West, 25 Miss. 156, 1852 Miss. LEXIS 166 (Miss. 1852).

A sale of land made under an execution after its return day does not pass title. Lehr v. Doe, 11 Miss. 468, 1844 Miss. LEXIS 83 (Miss. 1844).

If an execution issued more than fifteen days before a term be made returnable to a later term, it will be void. Lehr v. Doe, 11 Miss. 468, 1844 Miss. LEXIS 83 (Miss. 1844).

OPINIONS OF THE ATTORNEY GENERAL

With respect to execution sales of mobile homes for unpaid ad valorem taxes and any excess funds over which the officer conducting the sale is entitled to retain after payment of judgment liens in order of priority, there is both a statutory method (Section 13-3-181) and a remedy by rule (M.R.C.P.) for distribution of funds when there are conflicting claims thereto. Blaker, II, January 30, 1998, A.G. Op. #98-0023. Williamson v. Williamson, 52 Miss. 725, 1876 Miss. LEXIS 284 (Miss. 1876).

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d (Rev), Executions §§ 98 et seq.

Complaint, petition, or declaration against sheriff for failure to return execution, 22 Am. Jur. Pl & Pr Forms (Rev) Sheriffs, Police, and Constables, Form 91.

Complaint, petition, or declaration against sheriff for false return of execution, 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Forms 93, 94.

Complaint, petition, or declaration against sheriff for neglect of deputy in failing to levy execution, 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 32.

Complaint, petition, or declaration against surety to recover unsatisfied judgment against defaulting sheriff and deputy, 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 21.

9A Am. Jur. Pl & Pr Forms (Rev), Executions, Form 21.1 (Affidavit – For issuance of execution).

Directions to execution officer, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 71-76.

Return to writ of execution, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 171-181.

Complaint against sheriff for failure to levy or return execution, 18 Am. Jur. Pl & Pr Forms, Sheriffs, Police, and Constables, Forms 18:558-18:560, 18:562.

Complaint against sheriff for false return of execution, 18 Am. Jur. Pl & Pr Forms, Sheriffs, Police, and Constables, Form 18:564.

Complaint on sheriff's bond for failure to levy execution, 18 Am. Jur. Pl & Pr Forms, Sheriffs, Police, and Constables, Form 18:592.

CJS.

33 C.J.S., Executions §§ 93 et seq.

§ 13-3-115. Issuance of subsequent execution.

If a first writ of execution shall not have been returned and shall not have been executed, the clerk may issue another execution at the cost of any party in whose favor the execution was issued, if such party shall desire to take out another execution.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (3); 1857, ch. 61, art. 269; 1871, § 840; 1880, § 1774; 1892, § 3461; 1906, § 3960; Hemingway's 1917, § 2967; 1930, § 3013; 1942, § 1901.

Cross References — For other sections derived from same 1942 code section, see §§ 13-3-117, 13-3-119.

Issuance, execution, and return of execution, see Miss. Rule Civil Proc. 69.

RESEARCH REFERENCES

Am. Jur.
30 Am. Jur. 2d (Rev), Executions §§ 120- 122.

CJS.
33 C.J.S., Executions §§ 119-130.

§ 13-3-117. Issuance of execution against several defendants.

When one judgment has been recovered against several defendants, execution shall issue thereon against all the defendants, and not otherwise.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1(3); 1857, ch. 61, art. 269; 1871, § 840; 1880, § 1774; 1892, § 3461; 1906, § 3960; Hemingway's 1917, § 2967; 1930, § 3013; 1942, § 1901.

Cross References — For other sections derived from same 1942 code section, see §§ 13-3-115, 13-3-119.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

OPINIONS OF THE ATTORNEY GENERAL

Under Section 13-3-117, the court should issue a writ of execution against all defendants who have had a judgment rendered against them. The sheriff has no duty under Section 13-3-117, except to serve the writs of execution which are issued by the court. Hooks, April 5, 1996, A.G. Op. #96-0163.

A taking, under Section 13-3-117, may be constructive rather than actual, so long as the officer assumes dominion and control over the property. Hooks, April 5, 1996, A.G. Op. #96-0163.

RESEARCH REFERENCES

Am. Jur.
Executions against multiple debtors, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 51-53.

§ 13-3-119. Effect of death of one or more of several defendants before issuance of execution.

If one or more of several defendants have died before the issuance of a writ of execution, and a revivor shall not have been had, the fact of the death shall be noted on the writ, and the property of the survivors only shall be liable to the execution in such case.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (3); 1857, ch. 61, art. 269; 1871, § 840; 1880, § 1774; 1892, § 3461; 1906, § 3960; Hemingway's 1917, § 2967; 1930, § 3013; 1942, § 1901.

Cross References — For other sections derived from same 1942 code section, see §§ 13-3-115, 13-3-117.

For the rule governing substitution upon the death of a party, see Miss. R. Civ. P. 25.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Where before the issuance of execution one of several judgment defendants dies, a sale of his property thereunder without previous revivor against the heirs is void. Faison v. Johnson, 70 Miss. 214, 12 So. 152, 1892 Miss. LEXIS 94 (Miss. 1892).

The plaintiff may have execution against survivors though it must issue against all by name, with suggestion of death noted on the writ. Bowen v. Bonner, 45 Miss. 10, 1871 Miss. LEXIS 44 (Miss. 1871).

The failure to note the death of one will not vitiate the execution as to the other defendants. Wade v. Watt, Noble & Mobley, 41 Miss. 248, 1866 Miss. LEXIS 37 (Miss. 1866).

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d (Rev), Executions § 56.

Proceedings where judgment debtor is deceased, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 401-411.

CJS.

33 C.J.S., Executions §§ 80-84.

§ 13-3-121. Execution for costs of Supreme Court.

In cases decided in the Supreme Court, or dismissed or otherwise disposed of, the clerk of the court may issue executions for costs accrued in the Supreme Court, in excess of the filing fee, in the same manner that the clerks of the circuit courts are authorized to issue executions against any party liable therefor. Such executions may be directed to the sheriff of any county, and shall be returned in the same manner and under like penalties as in case of executions returnable to the circuit court.

HISTORY: Codes, 1857, ch. 63, art. 31; 1871, § 433; 1880, § 1449; 1892, § 3462; 1906, § 3961; Hemingway's 1917, § 2968; 1930, § 3014; 1942, § 1902; Laws, 1978, ch. 335, § 34, eff from and after July 1, 1978.

Cross References — Power of court clerks to make out executions for unpaid costs, see § 11-53-73.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Clerk of supreme court is not authorized to issue writs of garnishment on judgments by supreme court for costs incurred on appeal thereto. State v. Keeton, 176 Miss. 590, 169 So. 760, 1936 Miss. LEXIS 143 (Miss. 1936).

A case determining the application of costs collected on appeal without supersedeas. Boyd v. Applewhite, 123 Miss. 185, 85 So. 87, 1920 Miss. LEXIS 17 (Miss. 1920).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Costs §§ 98-101.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 13-3-123. Levy of writs of execution and attachments—on land.

In case of a levy of an attachment on real estate in the occupancy of any person, the officer shall go to the house or upon the land of the defendant, and there declare that he attaches the same at the suit of the plaintiff, but if the land be unoccupied, or if the process be an execution, he may attach or levy upon the same by returning that he has attached or levied upon the land, describing it by numbers or otherwise properly, and, if the process be an attachment, stating that the land is unoccupied; and in all cases the return of the officer shall be conclusive of the facts stated therein, except on timely motion to quash.

HISTORY: Codes, 1892, § 3464; 1906, § 3963; Hemingway's 1917, § 2970; 1930, § 3016; 1942, § 1904.

Cross References — Service of a writ of attachment generally, see § 11-33-23.

Duty of officer levying upon real estate by virtue of any process other than an execution upon a judgment to file notice with the chancery court clerk, see § 11-47-5.

Limitation period applicable to executions on domestic judgments, see § 15-1-43.

Domestic judgment not being a lien on a defendant's property for longer than 7 years unless an action be brought thereon before the expiration of such time, see § 15-1-47.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

In attachment suit in chancery against land of nonresident, no lien is created until mandatory provisions of Code 1942, §§ 756, 2731, and this section [Code 1942, § 1904] are complied with by issuance and levy of writ of attachment and filing of notice of levy, and mere filing of lis pendens notice is insufficient to create lien. Ryals v. Douglas, 205 Miss. 695, 39 So. 2d 311, 1949 Miss. LEXIS 461 (Miss. 1949).

In attachment suit in chancery against nonresident, alleged to own land in this state, for damages arising out of breach of warranty in sale of automobile, person claiming lis pendens notice filed in suit creates cloud upon his superior interest in the land may become party to suit on motion for purpose of protecting his interest and by his appearance in suit intervenor does not waive necessity of issuance and levy of writ of attachment. Ryals v. Douglas, 205 Miss. 695, 39 So. 2d 311, 1949 Miss. LEXIS 461 (Miss. 1949).

A sheriff holding an attachment writ against a corporation may refuse the demand of the plaintiff to levy it on the property of the individuals who compose it and manage its affairs, and by such refusal he does not incur liability to the plaintiff. State use of Owen v. Marshall, 69 Miss. 486, 13 So. 668, 1891 Miss. LEXIS 141 (Miss. 1891).

His liability cannot be affected by showing that if the levy had been made the property might thereafter have been subjected in a chancery proceeding to the demand of the plaintiff. State use of Owen v. Marshall, 69 Miss. 486, 13 So. 668, 1891 Miss. LEXIS 141 (Miss. 1891).

A service or levy of an attachment by an interested party is void. Dyson v. Baker, 54 Miss. 24, 1876 Miss. LEXIS 5 (Miss. 1876).

The directions of the statute as to the manner of levying an attachment must be complied with. Tucker v. Byars, 46 Miss. 549, 1872 Miss. LEXIS 24 (Miss. 1872).

It is not necessary to the validity of the return that it should state that the property belonged to the defendant; that fact will be intended. Saunders v. Columbus Life & General Ins. Co., 43 Miss. 583, 1870 Miss. LEXIS 69 (Miss. 1870).

If the return show a substantial compliance with the statute, the levy will be valid. The return need not follow the exact language used in the statute. Saunders v. Columbus Life & General Ins. Co., 43 Miss. 583, 1870 Miss. LEXIS 69 (Miss. 1870).

OPINIONS OF THE ATTORNEY GENERAL

The sheriff is not required to search the title to land to determine ownership or the identity of mortgagees before levying execution. The act of levying execution would entail going on the land and posting notice of the service of the writ. See Section 13-3-123. Richardson, September 13, 1995, A.G. Op. #95-0229.

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d, Attachment and Garnishment §§ 58, 272- 276.

9A Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 31 et seq. (writs of execution).

CJS.

7 C.J.S., Attachment §§ 100-103, 311-321.

33 C.J.S., Executions §§ 40, 143, 144.

§ 13-3-125. Levy of writs of execution and attachments — on personalty.

If the levy be upon personal property the officer shall take the same into his possession and dispose of it according to law.

HISTORY: Codes, 1892, § 3465; 1906, § 3964; Hemingway's 1917, § 2971; 1930, § 3017; 1942, § 1905.

Cross References — Delivery of property seized in execution of process by one appointed by a justice of the peace to execute it, see § 11-9-111.

Service of a writ of attachment generally, see § 11-33-23.

Selection of exempt personal property where an officer is about to levy an execution or attachment on personal property, see § 85-3-3.

Indemnity bond to be furnished officer levying an execution or attachment on personal property claimed to be exempt, see § 85-3-5.

Liability of sheriff seizing personal property exempt from execution, see § 85-3-5.

Replevy by defendant whose exempt personal property is seized pursuant to an execution or attachment, see § 85-3-9.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Where the sheriff left the automobiles upon which he levied execution in the possession of the judgment debtor but took the serial numbers of the vehicles and advised the debtor not to dispose of them in any manner, he took constructive possession of them and the levy was valid. Murdock Acceptance Corp. v. Woodham, 208 So. 2d 56, 1968 Miss. LEXIS 1395 (Miss. 1968).

The seizure may be constructive. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484, 1962 Miss. LEXIS 363 (Miss. 1962).

A valid levy may be made by taking down serial or model numbers of appliances and leaving them in the debtor's store under an agreement that they were not to be sold. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484, 1962 Miss. LEXIS 363 (Miss. 1962).

An instance of an unsuccessful effort to levy on a warrant in chancery clerk's custody. Mulford v. Roberts, 112 Miss. 573, 73 So. 609, 1916 Miss. LEXIS 148 (Miss. 1916).

A sheriff holding an attachment writ against a corporation may refuse the demand of the plaintiff to levy it on the property of the individuals who compose it and manage its affairs, and by such refusal he does not incur liability to the plaintiff. State use of Owen v. Marshall, 69 Miss. 486, 13 So. 668, 1891 Miss. LEXIS 141 (Miss. 1891).

His liability cannot be affected by showing that if the levy had been made the property might thereafter have been subjected to the demand of the plaintiff. State use of Owen v. Marshall, 69 Miss. 486, 13 So. 668, 1891 Miss. LEXIS 141 (Miss. 1891).

It is essential to the validity of the levy of an attachment on personalty that the officer take the possession of the same. Gates & Pleasants v. Flint, 39 Miss. 365, 1860 Miss. LEXIS 59 (Miss. 1860).

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d, Attachment and Garnishment §§ 59, 258 et seq.

30 Am. Jur. 2d, Executions § 168.

CJS.

7 C.J.S., Attachment §§ 89–97, 101, 556–560.

33 C.J.S., Executions §§ 28, 146-153, 156-159.

§ 13-3-127. Levy of writs of execution and attachments — on choses in action.

In case an attachment be levied on rights, credits, and choses in action, the officer shall take into his possession the books of accounts and other evidences of debt belonging to the defendant, and if the plaintiff so direct, he shall summon all persons appearing to be indebted to the defendant, or to have effects of his in their hands, as garnishees, in the manner prescribed by law.

HISTORY: Codes, 1892, § 3466; 1906, § 3965; Hemingway's 1917, § 2972; 1930, § 3018; 1942, § 1906.

Cross References — Sale or assignment of any chose in action after suit thereon has been filed, see § 11-7-7.

Service of a writ of attachment generally, see § 11-33-23.

Liability to levy of money, banknotes, judgments and the like, see § 13-3-133.

Purchaser's title to chose in action of defendant sold under execution or attachment, see § 13-3-135.

Duties of clerks and sheriffs with respect to executions issued on judgments rendered in suits on promissory notes and bills of exchange, see § 75-13-7.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Nothing in Miss. Code Ann. § 13-3-127, which was limited to attachments, supported the argument that a chose in action was not subject to a writ of execution. Maranatha Faith Ctr., Inc. v. Colonial Trust Co., 904 So. 2d 1004, 2004 Miss. LEXIS 1405 (Miss. 2004).

A suggestion in the writ that a certain person is indebted to the defendant makes it the duty of the officer to summon that person as garnishee, even though the writ contains no direct command that he do so. Semmes v. Patterson, 65 Miss. 6, 3 So. 35, 1887 Miss. LEXIS 3 (Miss. 1887).

The officer is not required to summon as garnishees all persons shown by the books of account to be indebted to defendant, but only such as may be alleged so to be. Boone v. McIntosh, 62 Miss. 744, 1885 Miss. LEXIS 135 (Miss. 1885).

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d (Rev), Attachment and Garnishment §§ 63 et seq., 269.

General Executions, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Form 51.

CJS.

7 C.J.S., Attachment § 98.

33 C.J.S., Executions §§ 35-37, 154, 534.

§ 13-3-129. Levy of writs of execution and attachments — on corporate stock and the like.

In case of the levy of an execution or attachment on the stock, shares, or interest of the defendant in any corporation or joint stock company, the officer shall go to the office or principal place of business of the corporation or company, and there declare that he attaches or levies upon the stock, shares, or interest of the defendant therein at the suit of the plaintiff. The officer shall demand of any officer, agent, or clerk of such corporation or company there present, and who is not the defendant, a statement in writing, under oath, of the amount of the defendant's stock, the number of his shares, or extent of his interest in such corporation or company, and shall leave with the officer, agent, or clerk, a copy of the writ. If no such officer, agent, or clerk be present, the officer shall post conspicuously at such office or place of business a copy of the writ, with a statement therewith that he has attached or levied upon the stock, shares, or interest of the defendant at the suit of the plaintiff, and that he demands of the corporation or company the statement, under oath, of the defendant's stock, share, or interest therein. The stock, shares, and interest of the defendant in the corporation or company, including all dividends that may accrue after such levy, shall be bound by the lien of the execution or attachment. The corporation or company shall, within a reasonable time, not longer than ten days after the levy, deliver to the officer a statement in writing, under oath, of the particulars demanded by the officer, and of the value of the defendant's stock, shares, or interest, and in case the corporation or company shall neglect or refuse to do so, or shall wilfully make any false statement thereof, such corporation or company shall be liable to the plaintiff for the full amount of the judgment or decree, or of such judgment as the plaintiff shall recover if the process be an attachment. The failure of the corporation or company to make such statement shall not affect the right of the officer to sell the stock, shares, or interest of the defendant.

HISTORY: Codes, 1892, § 3467; 1906, § 3966; Hemingway's 1917, § 2973; 1930, § 3019; 1942, § 1907.

Cross References — Service of a writ of attachment generally, see § 11-33-23.

Seizure and sale of corporate property and franchise when a judgment is returned against a corporation, see § 79-1-13.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

A certificate of shares of corporate stock issued to the judgment debtor, found in the custody of his agent or trustee, was held to be a proper subject of levy and sale under a similar provision contained in Code 1871, § 849. Yazoo & M. V. R. Co. v. Clarksdale, 257 U.S. 10, 42 S. Ct. 27, 66 L. Ed. 104, 1921 U.S. LEXIS 1309 (U.S. 1921).

Legislature may fix situs of stock of domestic corporation at its domicile for purposes of execution and attachment. Grenada Bank v. Glass, 150 Miss. 164, 116 So. 740, 1928 Miss. LEXIS 142 (Miss. 1928).

RESEARCH REFERENCES

ALR.

Power of equity court to reach or to sequester, for seizure and sale, beneficial equitable interests in corporate stock shares. 42 A.L.R.2d 920.

Am. Jur.

6 Am. Jur. 2d (Rev), Attachment and Garnishment § 270.

30 Am. Jur. 2d (Rev), Executions §§ 150, 169.

CJS.

7 C.J.S., Attachment §§ 99, 318–321..

33 C.J.S., Executions §§ 39-159.

§ 13-3-131. Levy of writs of execution and attachments — on interest of partners or co-owners.

When a defendant in execution shall own or be entitled to an undivided interest in any property not exclusively in his own possession, such interest may be levied on and sold by the sheriff without taking the property into actual possession, and such sale shall vest in the purchaser all the interest of the defendant in such property.

HISTORY: Codes, 1892, § 3468; 1906, § 3967; Hemingway's 1917, § 2974; 1930, § 3020; 1942, § 1908.

Cross References — Service of a writ of attachment generally, see § 11-33-23.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

A voluntary partition of land between co-tenants by agreement will not affect the right of a judgment creditor having a lien upon the interest of one tenant. Simmons v. Gordon, 98 Miss. 316, 53 So. 623, 1910 Miss. LEXIS 64 (Miss. 1910).

RESEARCH REFERENCES

ALR.

Judgment lien or levy of execution on one joint tenant's share or interest as severing joint tenancy. 51 A.L.R.4th 906.

Am. Jur.

6 Am. Jur. 2d, Attachment and Garnishment §§ 121, 122.

59A Am. Jur. 2d, Partnership §§ 500 et seq.

CJS.

7 C.J.S., Attachment §§ 459–461.

33 C.J.S., Executions § 45.

§ 13-3-133. Money, banknotes, judgments and the like may be levied on; endorsement and negotiation of seized instruments; proceeds to be applied against judgment debtor's obligations.

(1) Money, banknotes, bills, evidences of debt circulating as money, and any judgment or decree belonging to the defendant, may be taken under an execution or attachment and sold or disposed of according to law, or applied to the payment of the execution or in satisfaction of the judgment in attachment.

(2) The officer serving a writ may endorse all warrants, checks or drafts seized under execution or attachment. The officer serving the writ shall endorse on the warrant, check or draft the day and date it was received, shall take into possession, as they shall become due to the judgment debtor, monies, checks, drafts, warrants, vouchers or other evidences of indebtedness, and shall issue a receipt to the paying, disbursing or auditing officer therefor, and shall endorse, in the name of the judgment debtor, any and all checks, drafts, warrants, vouchers or other evidences of indebtedness delivered under the writ. The seized instruments may be negotiated and the proceeds thereof, or so much thereof as necessary, shall be applied to the payment of the execution or in satisfaction of the judgment in attachment in order of priority.

HISTORY: Codes, 1857, ch. 61, art. 285; 1871, § 849; 1880, § 1765; 1892, § 3470; 1906, § 3968; Hemingway's 1917, § 2975; 1930, § 3021; 1942, § 1909; Laws, 2008, ch. 324, § 1, eff from and after July 1, 2008.

Cross References — Levy of writs of execution and attachment on choses in action, see § 13-3-127.

Service of a writ of attachment generally, see § 99-23-7.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

A certificate of shares of corporate stock issued to the judgment debtor, found in the custody of his agent or trustee, was held to be a proper subject of levy and sale under a similar provision contained in Code 1871, § 849. Yazoo & M. V. R. Co. v. Clarksdale, 257 U.S. 10, 42 S. Ct. 27, 66 L.

Ed. 104, 1921 U.S. LEXIS 1309 (U.S. 1921).

Although Miss. Code Ann. § 93-11-71(3) provides an expedited execution process for judgments for child support arrearages, if the judgment is not executed, it creates no legal right or interest superior to competing claims or interests in funds forfeited by the government under 21 USCS § 853(n); thus, defendant's former wife and a department of human services had no claim to the forfeited bank accounts of defendant because they had no legal interest to the funds superior to defendant at the time of the commission of his drug crimes which gave rise to the government's forfeiture; even if the judgment lien had been enrolled, it did not attach to intangible property, such as the bank accounts, as defined under Miss. Code Ann. § 13-3-133. United States v. Butera, 2006 U.S. Dist. LEXIS 65729 (S.D. Miss. Sept. 13, 2006).

Where it appeared that judgment on which appealing execution creditor relied had been levied on and transferred to appellee, appeal held dismissed. McInnis v. Simmons, 162 Miss. 606, 139 So. 872, 1932 Miss. LEXIS 162 (Miss. 1932).

One whose sole property in this state is money on deposit subjects himself to attachment by going out of the state and taking the money with him, although he expects to return. Philadelphia Inv. Co. v. Bowling, 72 Miss. 565, 17 So. 231, 1895 Miss. LEXIS 6 (Miss. 1895).

A constable having money collected by him under execution, which is payable to the plaintiff therein, is subject to garnishment. Burleson v. Milan, 56 Miss. 399, 1879 Miss. LEXIS 136 (Miss. 1879).

A judgment debtor of a debtor may be garnisheed. Gray v. Henby, 9 Miss. 598, 1844 Miss. LEXIS 24 (Miss. 1844); O'Brien v. Liddell, 18 Miss. 371, 1848 Miss. LEXIS 95 (Miss. 1848).

OPINIONS OF THE ATTORNEY GENERAL

Under Sections 11-9-127 and 13-3-133, to enforce the final judgment of the court it is legal to specify money on defendant's person and/or money in cash drawer of a business on the same execution. However, the sheriff may not conduct a search of a person or premises without a warrant from a court, but may seize any property that is in plain view. Aldridge, May 2, 1995, A.G. Op. #95-0156.

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d (Rev), Attachment and Garnishment §§ 76, 80- 91— 101, 233.

CJS.

7 C.J.S., Attachment § 88.

33 C.J.S., Executions §§ 31, 36, 38, 534.

§ 13-3-135. Purchaser's title to certain interests of defendant sold under execution or attachment.

The purchaser of any chose in action, stock, share, interest, judgment, or decree of the defendant, sold under execution or attachment, shall become the owner thereof, in the same manner as if it had been regularly assigned to him by the defendant.

HISTORY: Codes, 1857, ch. 61, art. 285; 1880, § 1765; 1892, § 3471; 1906, § 3969; Hemingway's 1917, § 2976; 1930, § 3022; 1942, § 1910.

Cross References — Levy of writs of execution and attachment on choses in action, see § 13-3-127.

Property purchased at an execution sale being discharged of all liens of judgments, see § 13-3-185.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

When bank purchased a corporation's choses in action at a sheriff's sale, it also purchased lawsuits; as such, it became the owner of the lawsuits, and the trial court erred in not substituting the bank as a party plaintiff and in not dismissing the litigation. Citizens Nat'l Bank v. Dixieland Forest Prods., LLC, 935 So. 2d 1004, 2006 Miss. LEXIS 409 (Miss. 2006).

As Miss. Code Ann. § 13-3-135 addresses the rights of a purchaser of a chose of action sold under an execution, the Supreme Court of Mississippi holds that implicit in a reading of § 13-3-135 is the that a chose of action may be sold under execution. Maranatha Faith Ctr., Inc. v. Colonial Trust Co., 904 So. 2d 1004, 2004 Miss. LEXIS 1405 (Miss. 2004).

RESEARCH REFERENCES

ALR.

Power of equity court to reach or to sequester, for seizure and sale, beneficial equitable interests in corporate stock shares. 42 A.L.R.2d 920.

§ 13-3-137. Growing crop shall not be levied upon.

An execution shall nor be levied upon a growing crop, nor shall the same be seized under an attachment.

HISTORY: Codes, 1880, § 1764; 1892, § 3472; 1906, § 3970; Hemingway's 1917, § 2977; 1930, § 3023; 1942, § 1911.

Cross References — Growing crop not being subject to a judgment lien, see § 11-7-199.

Right of purchaser or mortgagor to cultivate and gather crops in cases of forfeiture under contract of purchaser or foreclosure of deeds in trust or mortgages, see § 11-25-25.

Chancery court decrees for the sale of a crop growing at the time of death of a deceased, see § 91-7-169.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Statute prohibiting sale of growing crops under execution must be strictly construed. Harris v. Harris, 150 Miss. 729, 116 So. 731, 1928 Miss. LEXIS 138 (Miss. 1928).

Where crop had matured and was ready for harvest, lien of levy attached. Harris v. Harris, 150 Miss. 729, 116 So. 731, 1928 Miss. LEXIS 138 (Miss. 1928).

Trust deed, executed after levy by sheriff under execution upon matured ungathered crop of cotton, cannot prevail as against judgment creditor. Harris v. Harris, 150 Miss. 729, 116 So. 731, 1928 Miss. LEXIS 138 (Miss. 1928).

RESEARCH REFERENCES

Am. Jur.
6 Am. Jur. 2d, Attachment and Garnishment §§ 62, 63.

CJS.
7 C.J.S., Attachment §§ 96, 97, 101.
33 C.J.S., Executions § 29.

§ 13-3-139. Lien of executions, and priority thereof.

Writs of executions, where there is no judgment lien, shall bind the property of defendant only from the time of the levy thereof. If two or more writs shall be delivered to the officer for execution against the same person, that which was first delivered shall be the first levied and satisfied. It shall be the duty of the sheriff or other officer, on receipt of an execution, to indorse thereon the day of the month and the year and the hour when he received the same. For a failure to make such indorsement, the sheriff or other officer shall be liable to a penalty of One Hundred Dollars ($100.00), to the use of the plaintiff, recoverable by motion before the court from which the execution issued, and the sheriff or other officer shall, moreover, be liable for all damages sustained by any party aggrieved.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (8); 1857, ch. 61, art. 270; 1871, § 841; 1892, § 3473; 1906, § 3971; Hemingway's 1917, § 2978; 1930, § 3024; 1942, § 1912.

Cross References — Lien created by and priority of judgment of circuit court entered on the judgment roll, see § 11-7-191.

Forfeiture of priority of judgment of circuit court entered on judgment roll, see § 11-7-193.

Criminal offenses of removal out of state of personal property subject to liens, see §§ 97-17-73 through 97-17-77.

Obstructing justice by removing property levied on by virtue of any legal process, see § 97-9-69.

Criminal offense of disposing property on which there exists a lien by law without notifying purchaser of said lien, see § 97-19-51.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

RESEARCH REFERENCES

Am. Jur.
30 Am. Jur. 2d, Executions §§ 159 et seq.

CJS.
33 C.J.S., Executions §§ 203-208, 210, 219 et seq.

§ 13-3-141. Officer to care for property and allowed expenses.

When a sheriff or other officer shall levy an execution on livestock, he shall provide for its sustenance until sold or otherwise legally discharged from the execution. Upon the return of the execution, the court, in cases where the compensation is not fixed by law, shall settle and adjust what the officer shall be allowed for his expenses incurred by providing for the stock, and also reasonable expenses of keeping personal property levied on by him, and the same shall be taxed as costs. The officer may retain the same out of the money arising from the sale of the property.

HISTORY: Codes, 1857, ch. 61, art. 274; 1871, § 843; 1880, § 1746; 1892, § 3474; 1906, § 3972; Hemingway's 1917, § 2979; 1930, § 3025; 1942, § 1913.

Cross References — Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

OPINIONS OF THE ATTORNEY GENERAL

The expenses incurred under Section 13-3-141, if not fixed by law, shall be settled by the court on return of the execution and taxed as costs. The sheriff can retain these costs out of the proceeds from the sale of the property. Richardson, September 13, 1995, A.G. Op. #95-0229.

If necessary to provide for the "sustenance" of the livestock levied under Section 13-3-141, the sheriff may hire someone to move and/or keep and feed the cattle and submit the expense to the court to be taxed as costs. Richardson, September 13, 1995, A.G. Op. #95-0229.

RESEARCH REFERENCES

Am. Jur.
30 Am. Jur. 2d(Rev), Executions §§ 177 et seq.

CJS.
33 C.J.S., Executions §§ 183, 191.

§ 13-3-143. Manner by which personal representative or successor thereof of plaintiff may have execution.

When the executor or administrator of a plaintiff who dies before satisfaction of his judgment shall file with the clerk a copy of his letters testamentary or of administration, duly certified, execution may be issued on the judgment as if such death had not occurred, and the clerk shall indorse on the execution the fact of the death of the plaintiff, and that the execution is at the instance of his executor or administrator, stating the name of the executor or administrator. When an administrator, guardian, trustee, or other person acting in a fiduciary or official capacity, who recovered a judgment, shall die, resign, or be removed without having obtained satisfaction thereof, his successor may have execution of the judgment in the same manner, without revival of the judgment by scire facias.

HISTORY: Codes, 1880, § 1747; 1892, § 3475; 1906, § 3973; Hemingway's 1917, § 2980; 1930, § 3026; 1942, § 1914.

Cross References — Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.
The section [Code 1942, § 1914] does not apply in favor of a foreign administrator who has not complied with the statutory requirements authorizing such administrator to act in this state. Jackson v.

Scanland, 65 Miss. 481, 4 So. 552, 1888 Miss. LEXIS 26 (Miss. 1888).

RESEARCH REFERENCES

Am. Jur.
30 Am. Jur. 2d, Executions § 55.

CJS.
33 C.J.S., Executions §§ 80-84.

§ 13-3-145. Effect of death of one or more of several plaintiffs before issuance of execution.

The death of one or more of several plaintiffs in a judgment shall not prevent the issuance of execution in favor of the survivors.

HISTORY: Codes, 1880, § 1748; 1892, § 3476; 1906, § 3974; Hemingway's 1917, § 2981; 1930, § 3027; 1942, § 1915.

Cross References — For the rule governing substitution upon the death of a party, see Miss. R. Civ. P. 25.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

RESEARCH REFERENCES

CJS.
33 C.J.S., Executions §§ 80-84.

§ 13-3-147. Assignee of a judgment may have execution.

The assignee of a judgment, where the plaintiff has died, may have execution thereof for his use as if such death had not occurred, upon filing with the clerk his affidavit of the death of the plaintiff and the assignment, and, where the plaintiff has not died, the assignee of a judgment may have an execution for his use in the same manner.

HISTORY: Codes, 1880, § 1749; 1892, § 3477; 1906, § 3975; Hemingway's 1917, § 2982; 1930, § 3028; 1942, § 1916.

Cross References — Sale or assignment of any chose in action after suit thereon has been filed, see § 11-7-7.

Assignment of negotiable instruments, see § 75-13-1.

For the rule governing substitution upon the death of a party, see Miss. R. Civ. P. 25.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 1916] recognizes the validity of an assignment of a judgment, and a municipality has the power to make an assignment of a judgment in its favor, it being shown that it received the full amount of the judgment rendered. Wilkinson v. Hutto, 157 Miss. 358, 128 So. 93, 1930 Miss. LEXIS 292 (Miss. 1930).

City may assign judgment recovered on bail bond to sheriff who negligently fails to execute it. Wilkinson v. Hutto, 157 Miss. 358, 128 So. 93, 1930 Miss. LEXIS 292 (Miss. 1930).

RESEARCH REFERENCES

Am. Jur.
30 Am. Jur. 2d (Rev), Executions §§ 55, 72.

CJS.
33 C.J.S., Executions §§ 80-83, 132, 133.

§ 13-3-149. Effect of death of party after execution issued.

The death of any plaintiff or defendant after the issuance or the levy of an execution on personal or real estate, shall not affect the duty of the officer making the levy to proceed and sell as if such death had not occurred.

HISTORY: Codes, 1880, § 1750; 1892, § 3478; 1906, § 3976; Hemingway's 1917, § 2983; 1930, § 3029; 1942, § 1917.

Cross References — Judgment surviving where one or more of several defendants against whom judgment has been entered die, see § 11-7-29.

For the rule governing substitution upon the death of a party, see Miss. R. Civ. P. 25.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

RESEARCH REFERENCES

Am. Jur.
30 Am. Jur. 2d, Executions §§ 55, 56, 72.

Proceedings where judgment debtor is deceased, 9 Am. Jur. Pl & pr Forms (Rev), Executions, Forms 401-411.

CJS.
33 C.J.S., Executions § 80-84.

§ 13-3-151. Execution issued against dead defendant.

After one year from the death of any defendant in a judgment for money, execution thereof may be had by leave of the court rendering the judgment, or of the judge thereof in vacation, upon cause shown, against any property on which such judgment was a lien at the time of the death of the defendant, and a sale of such property may be made in the same manner and with the same effect as if the defendant were living. In case of the death of the defendant in a judgment for the recovery of real or personal property, execution may be had without revival, in the same manner as if the defendant had not died.

HISTORY: Codes, 1880, § 1751; 1892, § 3479; 1906, § 3977; Hemingway's 1917, § 2984; 1930, § 3030; 1942, § 1918.

Cross References — Judgment surviving where one or more of several defendants against whom judgment has been entered die, see § 11-7-29.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

For the rule governing substitution upon the death of a party, see Miss. R. Civ. P. 25.

JUDICIAL DECISIONS

1. In general.

Execution under the statute must be obtained from the court or from the judge in vacation, on cause shown, on motion or petition, and formal notice or process is not required. The "cause shown" relates only to the judge in vacation. Alsop v. Cowan, 66 Miss. 451, 6 So. 208, 1889 Miss. LEXIS 126 (Miss. 1889).

The petition is insufficient if it fail to show that the judgment was a lien at the time of defendant's death and a demurrer thereto should be sustained. Alsop v. Cowan, 66 Miss. 451, 6 So. 208, 1889 Miss. LEXIS 126 (Miss. 1889).

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d, Executions § 56.

Proceedings where judgment debtor is deceased, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 401-411.

CJS.

33 C.J.S., Executions §§ 80-84.

§ 13-3-153. Motion to revive judgment.

Those provisions of the Mississippi Code of 1972 relating to the execution of judgments without revival shall not prevent a revival in any case by a motion to revive judgment.

HISTORY: Codes, 1880, § 1752; 1892, § 3480; 1906, § 3978; Hemingway's 1917, § 2985; 1930, § 3031; 1942, § 1919; Laws, 1991, ch. 573, § 102, eff from and after July 1, 1991.

Cross References — Necessity of revival of judgment by scire facias where no execution issued within year and day after its rendition, see § 11-7-201.

Issuance of scire facias in criminal case where defendant, prosecutor, or witness fails to comply with terms of bail bond or recognizance, see § 99-5-25.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

Applicability of the Mississippi Rules of Civil Procedure, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am. Jur.

Petition or application for scire facias to revive judgment, 15 Am. Jur. Pl & Pr Forms (Rev), Judgments, Forms 153.

Scire facias to revive judgment-writ and citation, 15 Am. Jur. Pl & Pr Forms (Rev), Judgments, Form 168.

Writ of scire facias to revive pending action, 18 Am. Jur. Pl & Pr Forms, Scire Facias, Forms 18:201-18:211.

Writ of scire facias to revive judgment, 18 Am. Jur. Pl & Pr Forms, Scire Facias, Forms, 18:221-18:244.

§ 13-3-155. Execution and garnishment on certain judgments and decrees of other courts may be issued by clerk.

The clerk of the circuit court in whose office any judgment or decree shall be enrolled, may issue execution and writs of garnishment thereon, directed to the sheriff of his county, returnable before the court which rendered the judgment or decree.

HISTORY: Codes, 1880, § 1738; 1892, § 3481; 1906, § 3979; Hemingway's 1917, § 2986; 1930, § 3032; 1942, § 1920; Laws, 1890, p. 66; Laws, 1990, ch. 408, § 2, eff from and after July 1, 1990.

Cross References — Lien created by and priority of judgment of circuit court entered on the judgment roll, see § 11-7-191.

Forfeiture of priority of judgment of circuit court entered on judgment roll, see § 11-7-193.

Issuance of a writ of garnishment on suggestion of plaintiff in judgment or decree, see § 11-35-1.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Circuit court lacked enforcement authority.

1. In general.

Clerk of trial court held without authority to issue writ of garnishment for collection of costs incurred on appeal to supreme court. State v. Keeton, 176 Miss. 590, 169 So. 760, 1936 Miss. LEXIS 143 (Miss. 1936).

The plaintiff in a judgment obtained in a justice's court may, under this section [Code 1942, § 1920], have it enrolled in the manner specified in any other county where property of the debtor may be situated, and have execution issued by the circuit clerk of such county to an officer of that county, returnable to the court of the justice who rendered the judgment. Smith v. Mixon, 73 Miss. 581, 19 So. 295, 1895 Miss. LEXIS 161 (Miss. 1895).

2. Circuit court lacked enforcement authority.

Dismissal of the judgment creditor's garnishment proceeding was proper where the circuit court lacked any authority to entertain the enforcement action of a judgment rendered in federal district court; it was plain that Miss. Code Ann. § 13-3-155, while imposing certain duties upon the circuit clerk once a judgment was enrolled did not grant to that circuit court any authority in the handling of an execution or garnishment issued by the clerk under the authority of § 13-3-155. Buckley v. Pers. Support Sys., 852 So. 2d 648, 2003 Miss. App. LEXIS 65 (Miss. Ct. App.), cert. denied, 859 So. 2d 392, 2003 Miss. LEXIS 380 (Miss. 2003).

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d, Attachment and Garnishment §§ 347 et seq.

30 Am. Jur. 2d (Rev), Executions §§ 73, 89 et seq.

CJS.

33 C.J.S., Executions §§ 61, 62 et seq.

§ 13-3-157. When a bond of indemnity shall be required.

If the sheriff shall levy an execution, attachment, or writ of seizure for the purchase-money on any personal property, and a doubt shall arise whether the right to the property be in the defendant or not, the sheriff may demand of the plaintiff a bond with sufficient sureties, payable to the officer, in a penalty equal to double the value of the property, conditioned that the obligors therein will indemnify and save harmless the officer against all damages which he may sustain in consequence of the seizure or sale of the property, and will pay to and satisfy any person claiming title to the property all damages which such person may sustain in consequence of the seizure or sale. If such bond be not given on or before the day of the sale or the return day of the attachment, the sheriff shall be justified in releasing the levy and delivering the property to the party from whose possession it was taken; but the plaintiff or his agent or attorney shall have reasonable notice, in writing, before the day of sale or return day of the writ, that the bond is required.

However, in instances where a warrant is issued by the Chairman of the State Tax Commission, as the commissioner, under the authority of any statute by which such commissioner is authorized to issue such warrants, and where the officer to whom such warrant is directed shall demand of the commissioner an indemnifying bond under the circumstances and conditions hereinbefore provided, the commissioner is hereby authorized to execute such indemnifying bond demanded and pay all obligations which may accrue by reason of the execution of such bond out of the funds appropriated by the Legislature to defray the expenses of the State Tax Commission.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (12); 1857, ch. 61, art. 275; 1871, § 844; 1880, § 1754; 1892, § 3482; 1906, § 3980; Hemingway's 1917, § 2987; 1930, § 3033; 1942, § 1921; Laws, 1952, ch. 404; Laws, 1956, ch. 409; Laws, 1990, ch. 408, § 3, eff from and after July 1, 1990.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' "Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References — Interposition of a claim by a person not a party to an execution who alleges to be the owner or to have a lien on the personal property levied upon, see § 11-23-7.

Selection by a defendant of exempt personal property where an officer is about to levy an execution or attachment on personal property, see § 85-3-3.

Indemnity bond to be furnished officer about to levy execution or attachment on personal property claimed to be exempt, see § 85-3-5.

Exemption from execution of property when the purchase-money thereof forms the debt on which the judgment is founded, see § 85-3-47.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Right of action on bond.
3. Time for giving bond.
4. —Reasonable notice.
5. Liability.
6. Defenses.
7. Damages recoverable.

1. In general.

Where sheriff had no right to demand indemnity bond, because the property in question was part of the realty, bond taken by him was not valid. Chenault v. W. T. Adams Mach. Co., 98 Miss. 326, 53 So. 629, 1910 Miss. LEXIS 65 (Miss. 1910).

Where an officer takes a bond conditioned under this section [Code 1942, § 1921] by mistake for one conditioned under Code 1906, § 2143, it will in a suit thereon be treated as properly conditioned by reason of Code 1942, § 1022. Bank of Gulfport v. O'Neal, 86 Miss. 45, 38 So. 630, 1905 Miss. LEXIS 66 (Miss. 1905).

The section [Code 1942, § 1921] does not apply to an attachment for rent. Gibson v. Lock & Smith, 58 Miss. 298, 1880 Miss. LEXIS 125 (Miss. 1880).

2. Right of action on bond.

The statute does not confer a right of action on the bond upon one who could not at common law have maintained an action against the officer. Moore v. Allen, 25 Miss. 363, 1853 Miss. LEXIS 1 (Miss. 1853); Marshall v. Stewart, 67 Miss. 494, 7 So. 284, 1889 Miss. LEXIS 62 (Miss. 1889).

3. Time for giving bond.

The statute only provides for an indemnifying bond after levy, though a bond taken before a levy is a good common-law obligation. Forniquet v. Tegarden, 24 Miss. 96, 1852 Miss. LEXIS 16 (Miss. 1852).

4. —Reasonable notice.

Where the sheriff wrote to a judgment creditor in Illinois two weeks before the first day of the court, demanding a bond to indemnify him against liability for levying an execution and advising such creditor that the execution would be held unexecuted until such bond was furnished, and the creditor failed to answer, two weeks was not an unreasonable time for the sheriff to wait for the creditor to furnish the bond so as to charge the sheriff with liability for failure to return the execution on the return day thereof. W. T. Rawleigh Co. v. Foxworth, 194 Miss. 205, 11 So. 2d 919, 1943 Miss. LEXIS 56 (Miss. 1943).

5. Liability.

Only liability of attaching creditors and sureties on attachment bond was for wrongful suing out of attachment and alone to defendant therein. Jamison v. Wilson, 152 Miss. 382, 119 So. 800, 1928 Miss. LEXIS 267 (Miss. 1928).

6. Defenses.

Whatever would have been a defense to the sheriff, if bond had not been taken, will be a defense to a suit on the bond. Moore v. Allen, 25 Miss. 363, 1853 Miss. LEXIS 1 (Miss. 1853).

7. Damages recoverable.

Attorney's fees and other expenses incurred sustaining a claimant's issue for property seized under attachment are not recoverable in a suit on an indemnifying bond required by this section [Code 1942, § 1921]. Moore v. Lowrey, 74 Miss. 413, 21 So. 237, 1896 Miss. LEXIS 161 (Miss. 1896).

The sureties on an indemnifying bond are not liable for damages resulting from the negligent failure of the officer to safely keep the property. Smokey v. Peters & Calhoun Co., 66 Miss. 471, 5 So. 632, 1889 Miss. LEXIS 130 (Miss. 1889).

The obligors in an indemnifying bond are bound to pay such damages as result from the seizure, and not attorney's fees or other expenses incurred in defending the title to the property. Brinker v. Leinkauff, 64 Miss. 236, 1 So. 170, 1886 Miss. LEXIS 52 (Miss. 1886).

The obligators in the bond are only liable for such damages as the sheriff would be liable for had bond not been taken. Moore v. Allen, 25 Miss. 363, 1853 Miss. LEXIS 1 (Miss. 1853).

OPINIONS OF THE ATTORNEY GENERAL

While Section 13-3-157 only provides for a bond after levy, the Supreme Court of Mississippi has held that a bond taken before levy is not illegal and void; such a bond given before a levy is valid. See Forniquet v. Tegarden, 24 Miss 96 (1850). Hooks, April 5, 1996, A.G. Op. #96-0163.

RESEARCH REFERENCES

ALR.

Judgment avoiding indemnity or liability policy for fraud as barring recovery from insurer by or on behalf of third person. 18 A.L.R.2d 891.

Amendment of attachment or garnishment bond. 47 A.L.R.2d 971.

Posting of redelivery bond as waiver of damages for wrongful attachment. 57 A.L.R.2d 1376.

Injury to credit standing, reputation, solvency, or profit potential as elements of damage resulting from wrongful execution against business property. 55 A.L.R.3d 911.

Am. Jur.

6 Am. Jur. 2d, Attachment and Garnishment §§ 456, 458 et seq.

Bond to indemnify sheriff before levy on personal property, 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 111.

Bond to indemnify officer before levy of execution on personal property, 18 Am. Jur. Pl & Pr Forms, Sheriffs, Police, and Constables, Form 18:645.

CJS.

7 C.J.S., Attachment §§ 597, 598.

§ 13-3-159. Remedy on bond of indemnity.

If the bond and security required under Section 13-3-157 be given, it shall be returned with the writ, and the person claiming the property levied on may prosecute a suit upon the bond, with the name of the payee or his representatives, for the use of the claimant, and recover such damages as he may sustain by the seizure or sale of the property or levy of process; and the claimant shall, after the due execution of the bond, be barred of any action against the officer levying the process, unless the obligors in the bond shall be or become insolvent, or the bond be otherwise invalid.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (12); 1857, ch. 61, art. 276; 1871, § 845; 1880, § 1755; 1892, § 3483; 1906, § 3981; Hemingway's 1917, § 2988; 1930, § 3034; 1942, § 1922.

Cross References — Actions on indemnity bond furnished officer about to levy an execution or attachment on personal property claimed to be exempt, see § 85-3-7.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

RESEARCH REFERENCES

ALR.

Judgment avoiding indemnity or liability policy for fraud as barring recovery from insurer by or on behalf of third person. 18 A.L.R.2d 891.

Amendment of attachment or garnishment bond. 47 A.L.R.2d 971.

Perjury or false swearing as contempt. 89 A.L.R.2d 1258.

Am. Jur.

6 Am. Jur. 2d, Attachment and Garnishment §§ 479- 482.

30 Am. Jur. 2d, Executions § 553.

Complaint, petition, or declaration by sheriff for indemnity against sureties on bond indemnifying officer against liability for execution, levy, and sale, 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 114.

Complaint, petition, or declaration by sheriff for indemnity against execution creditor causing sheriff to levy on goods of person other than execution debtor, 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 113.

Complaint by sheriff against execution creditor causing sheriff to levy upon goods of third person, 18 Am. Jur. Pl & Pr Forms, Sheriffs, Police, and Constables, Form 18:643.

CJS.

33 C.J.S., Executions §§ 640, 641.

§ 13-3-161. Where sales under execution or other process are to be made.

All sales by any sheriff by virtue of an execution or other process, when not issued by a justice court, shall be made at the courthouse of the county. The sheriff shall effectuate any execution on a judgment. However, personal property too cumbersome to be removed, may be sold at the place where the same may be, or at any convenient place. Cattle, sheep, or stock, other than horses and mules, may be sold at any public place in the neighborhood of the defendant's residence.

Sales of personal property under execution or other process from a justice court may be made at any convenient point in the county where it is found, or at the courthouse of the county. The sheriff shall effectuate any execution on a judgment. The sale of lands under executions or other process from such courts shall be made as under execution from the circuit courts.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 277; 1871, §§ 846, 1345; 1880, §§ 1757, 2208; 1892, §§ 3484, 3485; 1906, §§ 3982, 3983; Hemingway's 1917, §§ 2989, 2990; 1930, §§ 3035, 3036; 1942, §§ 1923, 1924; Laws, 1981, ch. 471, § 42; Laws, 1982, ch. 423, § 28; Laws, 1990, ch. 408, § 4; brought forward without change, Laws, 2011, ch. 418, § 5, eff from and after July 1, 2011.

Editor's Notes — Laws of 1981, ch. 471, § 60, provides as follows:

"SECTION 60. Section 8 of this act shall take effect and be in force from and after the date it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Sections 4, 48 and 59 of this act shall take effect and be in force from and after passage. Sections 17 and 22 of this act shall take effect and be in force from and after March 31, 1982. Sections 15, 16 and 58 of this act shall take effect and be in force from and after July 1, 1983. Sections 20, 23, 24, 25, 26, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 41, 42, 46, 47, 49, 50, 51, 52, 54, 55, 56 and 57 of this act shall take effect from and after January 1, 1984, or with respect to a given county, from and after such earlier date as such county elects to employ a clerk for the justice court of such county in accordance with the provisions of subsection (3) of Section 7 of this act. Sections 9, 10, 18, 19 and 43 of this act shall take effect and be in force from and after January 1, 1984." (Amended by Laws, 1982, ch. 423, § 28, eff from and after March 31, 1982).

Amendment Notes — The 2011 amendment brought forward the section without change.

Cross References — Sales of real estate ordered by decree of the chancery court, see § 11-5-93.

Sales of house, building, structure, or fixture and land, pursuant to a special writ of execution, see § 85-7-155.

Sales after condition broken where deed of trust or mortgage, with a power of sale, is silent as to the place and terms of sale, see § 89-1-57.

Provision for suspension of inconsistent laws regarding foreclosure of mortgaged property in certain emergency situations, see § 89-1-319.

Sales of perishable property in estate proceedings, see § 91-7-175.

Power of the chancery court to authorize executor or administrator to sell personal property at private sale, see § 91-7-177.

Authority of an executor or administrator to sell, at public or private sale, perishable goods or chattels or livestock of the decedent, see § 91-7-179.

Authority of an executor or administrator to sell the interest of the decedent in watercraft or other property which cannot be produced, see § 91-7-181.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

ANALYSIS

1. Sales under process issued other than by justice of the peace.
2. — Personal property.
3. —Application to federal marshals.
4. Sales under process issued by justice of the peace.

1. Sales under process issued other than by justice of the peace.

Statutes fixing the place for the sale of lands under execution are mandatory, and a sale made contrary to such a statute is void. Jones v. Rogers, 85 Miss. 802, 38 So. 742, 1904 Miss. LEXIS 106 (Miss. 1904), overruled, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), writ of error dismissed, 214 U.S. 196, 29 S. Ct. 635, 53 L. Ed. 965, 1909 U.S. LEXIS 1908 (U.S. 1909).

2. — Personal property.

When bank purchased a corporation's choses in action at a sheriff's sale, it also purchased lawsuits, and as such, it became the owner of the lawsuit; no one disputed that the sheriff's sale was properly conducted, and the trial court erred in not substituting the bank as a party plaintiff and in not dismissing the litigation. Citizens Nat'l Bank v. Dixieland Forest Prods., LLC, 935 So. 2d 1004, 2006 Miss. LEXIS 409 (Miss. 2006).

An execution sale of gas ranges, refrigerators, and television sets may permissibly be held at the debtor's place of business. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484, 1962 Miss. LEXIS 363 (Miss. 1962).

A tax sale of personal property at the courthouse is illegal where it was not feasible to have it all present there. State use of Stevens Enterprises, Inc. v. McDonnell, 236 Miss. 841, 111 So. 2d 662, 1959 Miss. LEXIS 381 (Miss. 1959).

3. —Application to federal marshals.

The requirement, under a former enactment of this provision (Code 1871, § 846), that execution sales be made at the county courthouse was not made applicable by the Conformity Act to execution of sales of personal property by a United States marshal and an execution sale may therefore be made at the courthouse of the United States where the judgment was rendered and the execution issued. Yazoo & M. V. R. Co. v. Clarksdale, 257 U.S. 10, 42 S. Ct. 27, 66 L. Ed. 104, 1921 U.S. LEXIS 1309 (U.S. 1921).

As a general rule United States marshals in making sales of land under execution are required (U. S. Rev. Stat., § 914, 28 USC § 724) to conform to the laws of the state governing the subject of such sales and they must be made at the place provided by the law of the state for sheriff's sales of land under execution. Jones v. Rogers, 85 Miss. 802, 38 So. 742, 1904 Miss. LEXIS 106 (Miss. 1904), overruled, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), writ of error dismissed, 214 U.S. 196, 29 S. Ct. 635, 53 L. Ed. 965, 1909 U.S. LEXIS 1908 (U.S. 1909).

The word "place" in a statute (Act of Congress Feb. 16, 1838), authorizing marshal's sales of land under execution in

Mississippi to be made upon written request of defendant "at the place where the United States court for the district is holden" does not mean any place in the town or city where the court was held, but a particular place in which the court held its sittings. Jones v. Rogers, 85 Miss. 802, 38 So. 742, 1904 Miss. LEXIS 106 (Miss. 1904), overruled, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), writ of error dismissed, 214 U.S. 196, 29 S. Ct. 635, 53 L. Ed. 965, 1909 U.S. LEXIS 1908 (U.S. 1909).

4. Sales under process issued by justice of the peace.

Execution sale, although advertised once each week for three weeks pursuant to statute, held void where less than three weeks elapsed between first publication and sale. Vansant v. Dodds, 164 Miss. 787, 144 So. 688, 1932 Miss. LEXIS 254 (Miss. 1932).

OPINIONS OF THE ATTORNEY GENERAL

With respect to sale of property deeded to state as result of civil prosecution pursuant to Racketeer Influenced and Corrupt Organizations Act, public auction at County courthouse should be conducted as set out in Sections 13-3-161, et seq., except that Secretary of State rather than Sheriff should conduct sale. Nelson, March 23, 1994, A.G. Op. #94-0059.

RESEARCH REFERENCES

ALR.

Rights and remedies of purchaser at judicial or execution sale where there was misrepresentation or mistake as to acreage or boundaries. 69 A.L.R.2d 254.

Am. Jur.

30 Am. Jur. 2d (Rev), Executions § 327.

CJS.

33 C.J.S., Executions § 357.

§ 13-3-163. When sales of land may be made; advertising of sale.

(1) Sales of land may be made on any day except Sunday and any legal holiday as defined by Section 3-3-7, Mississippi Code of 1972, and shall be advertised by the plaintiff in a newspaper published in the county, once in each week for three (3) successive weeks, or, if no newspaper is so published, in some newspaper having a general circulation therein once in each week for three (3) successive weeks.

(2) In addition to effectuating the advertisement, any expense or cost incurred by advertising and providing notice for the sale of land pursuant to subsection (1) of this section in justice court shall be paid by the plaintiff, and said expenses shall be taxed as costs.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 277; 1871, § 846; 1880, § 1759; 1892, § 3486; 1906, § 3984; Hemingway's 1917, § 2991; 1930, § 3037; 1942, § 1925; Laws, 1960, ch. 239; Laws, 1978, ch. 398, § 1; Laws, 1989, ch. 405, § 1, eff from and after July 1, 1989.

Cross References — Execution of warrant by sheriff or special agent; fees, see § 27-65-63.

Preference in sales of property when decedent's estate consists of both real and personal property and it is necessary to sell a portion thereof, see § 91-7-187.

Sales of the real estate of decedent where the personal property will not suffice to pay debts and expenses, see § 91-7-191.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

In a partition action, the chancellor's award of attorney's fees payable by the appealing parties, and assessed against the sale proceeds, was error, as there was no evidence that said fees were reasonable and there was no bad faith shown. Further, as to notice of the sale, Miss. Code Ann. § 13-3-163 did not apply where the chancellor gave specific instruction for terms of the sale pursuant to Miss. Code Ann. §§ 11-5-93 and 11-5-95, and while the sale price was low, the chancellor did not abuse his discretion in refusing to set aside the sale. Necaise v. Ladner, 910 So. 2d 699, 2005 Miss. App. LEXIS 194 (Miss. Ct. App. 2005).

A deed of trust which provides that in case of default the trustee shall take possession without notice, and after duly advertising, sell for cash, at public auction at the courthouse door, a sufficiency of the property to make payment, is not silent as to the place and terms of sale and mode of advertising within the meaning of Code 1942, § 891. Gardner v. State, 235 Miss. 119, 108 So. 2d 592, 1959 Miss. LEXIS 410 (Miss. 1959).

Where sale of land under execution was advertised one day a week for three successive weeks, lapse of two weeks between time of last advertisement and time of sale held not to invalidate sale advertisement not being required for three successive weeks next preceding day of sale. Walton v. Gregory Funeral Home, 170 Miss. 129, 154 So. 717, 1934 Miss. LEXIS 132 (Miss. 1934).

Statute requiring advertisement of execution sales once each week for three weeks should be construed with statute defining meaning of requirements for three weeks' publication. Vansant v. Dodds, 164 Miss. 787, 144 So. 688, 1932 Miss. LEXIS 254 (Miss. 1932).

Execution sale advertised once each week for three weeks, held void where less than three weeks elapsed between first publication and sale. Vansant v. Dodds, 164 Miss. 787, 144 So. 688, 1932 Miss. LEXIS 254 (Miss. 1932).

As to sales under deeds of trust, see Davis v. O'Connell, 92 Miss. 348, 47 So. 672, 1908 Miss. LEXIS 258 (Miss. 1908); Melsheimer v. McKnight, 92 Miss. 386, 46 So. 827, 1908 Miss. LEXIS 250 (Miss. 1908); Lynchburg Shoe Co. v. Castleman, 116 Miss. 188, 76 So. 878, 1917 Miss. LEXIS 306 (Miss. 1917).

OPINIONS OF THE ATTORNEY GENERAL

Sections 13-3-163 and 13-3-165 provide that the costs of advertising and providing notice of the sale shall be paid by the plaintiff and the expense then taxed as costs. Richardson, September 13, 1995, A.G. Op. #95-0229.

The Legislature amended Sections 13-3-163 and 13-3-165 to provide that any expense or cost incurred by advertising and providing notice for legal sales shall be paid by the plaintiff. The amendments did not relieve the sheriff from liability for ensuring that proper notice is given prior to a legal sale. A sheriff may provide for the advertisement of such sales and then charge the cost of such advertisement to the plaintiff. Hooks, April 5, 1996, A.G. Op. #96-0163.

RESEARCH REFERENCES

ALR.

Estoppel of or waiver by parties or participants regarding irregularities or defects in execution or judicial sale. 2

A.L.R.2d 6.

Am. Jur.

30 Am. Jur. 2d, Executions §§ 312, 313, 322.

Notice of execution sale, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Form 121.

8 Am. Jur. Proof of Facts, Newspapers, Proof No. 1 (establishing newspaper as one of general circulation).

CJS.

33 C.J.S., Executions §§ 357, 370-375.

§ 13-3-165. When sales of personalty may be made; advertising of sale.

(1) Sales of personalty may be made on any day except Sunday and any legal holiday as defined by Section 3-3-7, Mississippi Code of 1972, and shall be advertised by the plaintiff ten (10) days before the day of sale by posting notices of the time, terms and place of sale in three (3) public places in the county, one (1) of which shall be at the courthouse.

(2) In addition to effectuating the advertisement, any expense or cost incurred by advertising and providing notice for the sale of personalty pursuant to subsection (1) of this section in justice court shall be paid by the plaintiff, and said expenses shall be taxed as costs.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 277; 1871, § 846; 1880, § 1759; 1892, § 3487; 1906, § 3984; Hemingway's 1917, § 2992; 1930, § 3038; 1942, § 1926; Laws, 1978, ch. 398, § 2; Laws, 1989, ch. 405, § 2; brought forward without change, Laws, 2011, ch. 418, § 6, eff from and after July 1, 2011.

Cross References — Execution of warrant by sheriff or special agent; fees, see § 27-65-63.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

ANALYSIS

1. Generally.
2. Liability of sheriff.
3. —Defenses.
4. Passage of title.

1. Generally.

When bank purchased a corporation's choses in action at a sheriff's sale, it also purchased lawsuits, and as such, it became the owner of the lawsuit; no one disputed that the sheriff's sale was properly conducted, and the trial court erred in not substituting the bank as a party plaintiff and in not dismissing the litigation. Citizens Nat'l Bank v. Dixieland Forest Prods., LLC, 935 So. 2d 1004, 2006 Miss. LEXIS 409 (Miss. 2006).

A sheriff's sale was in compliance with the ten day advertisement requirements of Code 1972 § 13-3-165, where the first notice was posted on November 14, 1975, and the sale occurred on November 24, 1975; the provisions of Code 1972 § 1-3-67 prescribe the applicable formula for computing such ten day period, in that the first day is to be excluded and the last included. Combs v. Adams, 350 So. 2d 41, 1977 Miss. LEXIS 2206 (Miss. 1977).

Posted notices of the time and place of public sale of a repossessed automobile which comply with the provisions of this section [Code 1942, § 1926] are the only form of notice the seller is required to give the buyer, and notice to the buyer of the time and place of sale by means of a letter is not necessary. Ward v. McPhail Oldsmobile, Inc., 203 So. 2d 491, 1967 Miss. LEXIS 1378 (Miss. 1967).

Where the retained title contract provided that the seller could purchase an automobile at public sale, the sale at which the seller purchased the repossessed vehicle was valid. Ward v. McPhail Oldsmobile, Inc., 203 So. 2d 491, 1967 Miss. LEXIS 1378 (Miss. 1967).

The seller of an automobile, under the terms of a retained title contract, has a right to sell the repossessed automobile at public sale, either in the county where the contract was made and where the automobile was returned to the seller by the finance company, or in the county of the residence of the purchaser. Ward v. McPhail Oldsmobile, Inc., 203 So. 2d 491, 1967 Miss. LEXIS 1378 (Miss. 1967).

The requirement that the sale be made to the highest bidder does not preclude a sale where there is only one bidder. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484, 1962 Miss. LEXIS 363 (Miss. 1962).

2. Liability of sheriff.

Fact that sheriff gave only eight days' notice of sale of merchandise for failure to pay sales tax and not the ten days' notice as required by statute constituted such misconduct that the sheriff was no longer entitled to protection of the writ, and, if sued in trespass, his defense could not rest upon the process nor could it be used in diminution of damages. Rigby v. Whitten, 196 Miss. 661, 18 So. 2d 152, 1944 Miss. LEXIS 248 (Miss. 1944).

A sheriff, liable to property owner for the sale of his goods and the collection of sales taxes as provided under sales tax statutes because the sale was not advertised for ten days as provided hereunder, was guilty of conversion, the measure of damages for which, in the absence of special circumstances, is the value of the property, market value if such it has, at the time and place of its conversion with interest thereon. Rigby v. Stone, 194 Miss. 775, 13 So. 2d 230 (Miss. 1943).

3. —Defenses.

Owner of merchandise sold by sheriff for failure to pay sales tax at sale which was invalid because the required ten days' notice had not been given, who acquiesced in the sale, gave no notice to the purchaser, and delivered the property to the purchaser, was not entitled as against the sheriff to demand more than the latter received from the purchaser at the sale, and the sheriff was protected to the extent of the amount remitted to the state tax commission as directed by warrant, but the owner was entitled to the amount retained by the sheriff as costs since the sheriff did not act as the warrant directed. Rigby v. Whitten, 196 Miss. 661, 18 So. 2d 152, 1944 Miss. LEXIS 248 (Miss. 1944).

4. Passage of title.

Where owner of personalty which has been sold under a void warrant of sale, or at an improper time, of which the owner then knows, voluntarily delivers the property to the purchaser or takes active steps to that end without giving any warning or notice whatever at any time or in any manner to purchaser and the latter pays his money without notice, title passes to the purchaser on such delivery and the owner cannot thereafter disturb him. Rigby v. Whitten, 196 Miss. 661, 18 So. 2d 152, 1944 Miss. LEXIS 248 (Miss. 1944).

OPINIONS OF THE ATTORNEY GENERAL

Sections 13-3-163 and 13-3-165 provide that the costs of advertising and providing notice of the sale shall be paid by the plaintiff and the expense then taxed as costs. Richardson, September 13, 1995, A.G. Op. #95-0229.

The Legislature amended Sections 13-3-163 and 13-3-165 to provide that any expense or cost incurred by advertising and providing notice for legal sales shall be paid by the plaintiff. The amendments did not relieve the sheriff from liability for ensuring that proper notice is given prior to a legal sale. A sheriff may provide for the advertisement of such sales and then charge the cost of such advertisement to the plaintiff. Hooks, April 5, 1996, A.G. Op. #96-0163.

RESEARCH REFERENCES

ALR.
Estoppel of or waiver by parties or participants regarding irregularities or defects in execution or judicial sale. 2 A.L.R.2d 6.

Am. Jur.
30 Am. Jur. 2d, Executions §§ 312, 313, 322.

Notice of execution sale, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Form 121.

CJS.
33 C.J.S., Executions §§ 357, 370-375.

§ 13-3-167. Sale of perishable goods.

When goods and chattels are levied on, which by their nature are perishable and in danger of immediate waste or decay, the officer levying shall sell them at such time, and on such notice, and at such place as a sound discretion may warrant.

HISTORY: Codes, 1871, §§ 1466-1469; 1880, § 1758; 1892, § 3488; 1906, § 3986; Hemingway's 1917, § 2993; 1930, § 3039; 1942, § 1927; brought forward without change, Laws, 2011, ch. 418, § 7, eff from and after July 1, 2011.

Cross References — Attaching, replevying, sequestering, or seizing perishable commodities passing through the ports of entry in the state, see §§ 11-1-43 through 11-1-49.

Execution of warrant by sheriff or special agent; fees, see § 27-65-63.

Warehouseman's options with regard to perishable goods, see § 75-7-206.

Sales of perishable property in estate proceedings, see § 91-7-175.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.
Railroad crossties, though liable to be burned, are not "in danger of immediate waste or decay." Goodman v. Moss, 64 Miss. 303, 1 So. 241, 1886 Miss. LEXIS 61 (Miss. 1886).

OPINIONS OF THE ATTORNEY GENERAL

With respect to execution sales of mobile homes for unpaid ad valorem taxes and any excess funds over which the officer conducting the sale is entitled to retain after payment of judgment liens in order of priority, there is both a statutory method (Section 13-3-181) and a remedy by rule (M.R.C.P.) for distribution of funds when there are conflicting claims thereto. Blaker, II, January 30, 1998, A.G. Op. #98-0023.

RESEARCH REFERENCES

ALR.
Construction and effect of provision for execution sale on short notice, or sale in advance of judgment under writ of attachment, where property involved is subject to decay or depreciation. 3 A.L.R.3d 593.

Am. Jur.

30 Am. Jur. 2d (Rev), Executions § 320.

CJS.

33 C.J.S., Executions §§ 357-359, 370-375.

§ 13-3-169. Hours and mode of sale.

(1) Except as otherwise provided in this section, sales under execution shall not commence sooner than eleven o'clock in the forenoon, nor continue later than four o'clock in the afternoon. All such sales shall be by auction, to the highest bidder for cash, and only so much of the property levied on shall be sold as will satisfy the execution and costs.

(2) Sales under execution conducted by a special agent of the State Tax Commission pursuant to a warrant, jeopardy warrant or alias warrant issued by the Chairman of the State Tax Commission, shall commence and be conducted at the times specified by the Chairman of the State Tax Commission or his duly authorized agent. All such sales shall be by auction to the highest bidder for cash or for cash equivalent deemed acceptable by the Chairman of the State Tax Commission. Only so much of the property levied on shall be sold as will satisfy the execution and costs.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 277; 1871, § 846; 1880, § 1759; 1892, § 3489; 1906, § 3987; Hemingway's 1917, § 2994; 1930, § 3040; 1942, § 1928; Laws, 2005, ch. 382, § 1; brought forward without change, Laws, 2011, ch. 418, § 8, eff from and after July 1, 2011.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' "Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References — Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

When bank purchased a corporation's choses in action at a sheriff's sale, it also purchased lawsuits, and as such, it became the owner of the lawsuit; no one disputed that the sheriff's sale was properly conducted, and the trial court erred in not substituting the bank as a party plaintiff and in not dismissing the litigation. Citizens Nat'l Bank v. Dixieland Forest Prods., LLC, 935 So. 2d 1004, 2006 Miss. LEXIS 409 (Miss. 2006).

The commissioner appointed by the trial court to conduct a partition sale of real estate violated neither the court order nor § 13-3-169 when he accepted a cashier's check in lieu of cash for the bid, since the commissioner cashed the check and invested the funds pending confirmation of the sale by the court and no prejudice resulted. McCormick v. McCormick, 449 So. 2d 1209, 1984 Miss. LEXIS 1711 (Miss. 1984).

The requirement that the sale be made to the highest bidder does not preclude a sale where there is only one bidder. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484, 1962 Miss. LEXIS 363 (Miss. 1962).

Resale under deed of trust at 3 p. m. held invalid notwithstanding sale was advertised for about noon, and resale if successful bidder defaulted was announced before bidders dispersed. Gray v. Sullivan, 162 Miss. 610, 139 So. 855, 1932 Miss. LEXIS 156 (Miss. 1932).

Announcement of resale, if successful bidder defaulted, would not authorize resale even if unconditional notice would authorize it. Gray v. Sullivan, 162 Miss. 610, 139 So. 855, 1932 Miss. LEXIS 156 (Miss. 1932).

RESEARCH REFERENCES

ALR.
Propriety of setting minimum or "upset price" for sale of property at judicial foreclosure. 4 A.L.R.5th 693.

Am. Jur.
30 Am. Jur. 2d, Executions §§ 322, 328 et seq.

CJS.
33 C.J.S., Executions §§ 358, 359, 376, 377.

§ 13-3-171. Lands to be sold to be offered in subdivisions and as an entirety.

All lands comprising a single tract, sold under execution, shall be first offered in subdivisions not exceeding one hundred and sixty (160) acres, or one-quarter section, and then offered as an entirety, and the price bid for the latter shall control only when it shall exceed the aggregate of the bids for the same in subdivisions.

HISTORY: Codes, 1892, § 3491; 1906, § 3989; Hemingway's 1917, § 2996; 1930, § 3042; 1942, § 1930; brought forward without change, Laws, 2011, ch. 418, § 9, eff from and after July 1, 2011.

Cross References — Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

RESEARCH REFERENCES

ALR.
Inadequacy of price as basis for setting aside execution or sheriff's sale-modern cases. 5 A.L.R.4th 794.

Am. Jur.
30 Am. Jur. 2d, Executions §§ 333, 334.

CJS.
33 C.J.S., Executions §§ 361, 362.

§ 13-3-173. Sale may be adjourned or continued from day to day.

Whenever, from a defect of bidders, caused by inclement weather or otherwise, the property shall not be likely to command a reasonable price, the officer may adjourn the sale and readvertise the same for a subsequent day. Whenever a sale advertised for a particular day shall not be completed on that day, the same may be continued from day to day.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 278; 1871, § 847; 1880, § 1760; 1892, § 3490; 1906, § 3988; Hemingway's 1917, § 2995; 1930, § 3041; 1942, § 1929; brought forward without change, Laws, 2011, ch. 418, § 10, eff from and after July 1, 2011.

Cross References — Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Where bids are grossly low, and generally by only one bidder, the sale should be adjourned and readvertised. Industries Sales Corp. v. Reliance Mfg. Co., 243 Miss. 463, 138 So. 2d 484, 1962 Miss. LEXIS 363 (Miss. 1962).

OPINIONS OF THE ATTORNEY GENERAL

Where a property does not command a reasonable price, or where the bids are of a grossly low character, the sheriff should adjourn the sale and readvertise it for another day, as provided by Section 13-3-173. Richardson, September 13, 1995, A.G. Op. #95-0229.

Section 13-3-173 indicates that it is the duty of the sheriff to re-advertise for a subsequent sale. However, the cost of re-advertising would still lie with the plaintiff. Hooks, April 5, 1996, A.G. Op. #96-0163.

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d (Rev), Executions § 324.

Notice of adjournment of execution sale, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Form 122.

CJS.

33 C.J.S., Executions § 360.

§ 13-3-175. Venditioni exponas.

If any property taken in execution shall remain in the hands of the officer unsold, he shall so return on the execution, and thereupon a writ of venditioni exponas shall issue, directed to the officer, upon which the like proceedings shall be had as might and ought to have been had on the first execution. And if property sold on a venditioni exponas shall not bring enough to satisfy the judgment, the officer shall forthwith return the same, and thereupon another proper execution for the balance remaining unpaid may be issued.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (18); 1857, ch. 61, art. 279; 1871, § 848; 1880, § 1761; 1892, § 3492; 1906, § 3990; Hemingway's 1917, § 2997; 1930, § 3043; 1942, § 1931.

Cross References — Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

A sale of land under an alias execution instead of a venditioni exponas to an innocent purchaser does not render the sale invalid. Baldwin v. Dreyfus, 92 Miss. 94, 45 So. 428, 1907 Miss. LEXIS 15 (Miss. 1907).

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d, Executions § 307.

CJS.

33 C.J.S., Executions §§ 349, 350.

§ 13-3-177. Venditioni exponas to issue when officer taking property dies.

When the officer taking property under execution shall die before the sale thereof, a writ of venditioni exponas shall issue, directed to the proper officer of the county in which the property was taken, and such officer shall, under the writ of venditioni exponas, receive the property from the representatives of the former sheriff, or other officer, who are required to deliver the same to the officer having the venditioni exponas, on his producing the same and executing a receipt for the property, and the officer shall proceed to sell the same as in other cases.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (52); 1847, ch. 61, art. 292; 1871, § 856; 1880, § 1771; 1892, § 3493; 1906, § 3991; Hemingway's 1917, § 2998; 1930, § 3044; 1942, § 1932.

Cross References — Duty to pay of legal representative of deceased public officer owing public money, see § 25-1-67.

Payment by personal representative of the debts due by decedent's estate generally, see § 85-7-261.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d, Executions §§ 160 et seq., 307.

CJS.

33 C.J.S., Executions §§ 348-350.

§ 13-3-179. Procedure to be followed where property is not delivered by representatives of deceased officer taking property.

If the representatives of the deceased officer shall refuse or neglect to deliver the property on demand, or if there shall not be an executor or administrator of his estate, the officer having the writ of venditioni exponas may seize the property taken by the former officer wherever it may be found, and sell the same as in other cases, or the plaintiff may move in the court from which the execution issued against the representatives of the deceased officer and his sureties, and thereupon a judgment shall be entered against the representatives of the deceased officer and his sureties for the amount of the execution which came to the hands of such deceased officer, with interest and costs.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (52); 1857, ch. 61, art. 293; 1871, § 857; 1880, § 1772; 1892, § 3494; 1906, § 3992; Hemingway's 1917, § 2999; 1930, § 3045; 1942, § 1933.

Cross References — Suits on bonds of public officers generally, see § 25-1-17.
Duty to pay of legal representative of public officer owing public money, see § 25-1-67.
Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

§ 13-3-181. Duty of officer to examine judgment-roll; priority of liens.

After the sale of any property by the sheriff or other officer on execution, before the money is paid over by him, he shall examine the judgment-roll to ascertain if there by any elder judgment or judgments, decree or decrees, enrolled against the defendant or defendants in execution, having a priority of lien. If there be, he shall apply the proceeds of the sale to the judgment or decree having the priority of lien, and return such application upon the execution. Should there by any dispute as to which judgment or decree has the priority of lien, the officer shall make a statement of the fact of the dispute, and return the same, with the execution and the money raised thereon, into the court to which the same is returnable, and the court shall, on motion and examination of the facts, determine to whom the money so raised on execution shall be paid.

HISTORY: Codes, 1880, § 1762; 1892, § 3495; 1906, § 3993; Hemingway's 1917, § 3000; 1930, § 3046; 1942, § 1934.

Cross References — Lien created by and priority of judgment of circuit court entered on the judgment roll, see § 11-7-191.
Interposition of claim by a person not a party to execution who alleges to be owner or to have lien on personal property levied upon, see § 11-23-7.
Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Application of proceeds.

1. In general.

The statute has no application to voluntary payments made by the defendant to the sheriff. Johnson v. Edde, 58 Miss. 664, 1881 Miss. LEXIS 21 (Miss. 1881); Mississippi C. R. Co. v. Harkness, 32 Miss. 203, 1856 Miss. LEXIS 177 (Miss. 1856).

2. Application of proceeds.

Where judgments are recovered by different holders of several promissory notes given for land and secured by express lien, each judgment is in equity entitled to share in the proceeds of the land without reference to the time of their enrollment, the debtor being insolvent. Aaron & Lindenmayer v. Warner, 62 Miss. 370, 1884 Miss. LEXIS 86 (Miss. 1884).

When two judgment against different defendants are liens upon the same property and it is sold under the judgment with the junior lien, the senior judgment lien is unimpaired by the sale, and the purchaser takes subject to the maxim, "caveat emptor." Hall v. Meridian Sav. Institution, 56 Miss. 674, 1879 Miss. LEXIS 189 (Miss. 1879).

The lien created by the levy of an execution can only be defeated by a lien existing anterior to the levy, hence the enrollment of a judgment after the levy of an execution does not create a superior lien to that created by the levy. S. Botters & Co. v. Edrington, 30 Miss. 580, 1856 Miss. LEXIS 2 (Miss. 1856).

The money should be appropriated to the oldest lien, whether the judgment having the prior lien be rendered in a state or a United States court. Bonaffee v. Fisk, 21 Miss. 682, 1850 Miss. LEXIS 83 (Miss. 1850).

Where, on motion of the sheriff in the court below to appropriate money made on several executions, that court awards the sum to a particular one, from which only one of the excluded parties appeals, the supreme court, in reversing the judgment, will order the money to be paid to that creditor entitled to it, without regard to his not having made objection to the decision below. Heizer v. Fisher, 21 Miss. 672, 1850 Miss. LEXIS 81 (Miss. 1850).

OPINIONS OF THE ATTORNEY GENERAL

The levying officer is required under Section 13-3-181 to examine the judgment roll in the county to determine if there are prior judgment liens against the defendant or defendants in execution. If there are prior judgment liens, then the proceeds of the execution sale shall be first applied to the prior liens until they are satisfied. Richardson, September 13, 1995, A.G. Op. #95-0229.

Under Section 13-3-181, if there is a dispute as to the priority of judgment liens, then the officer shall make a statement of this fact and return the execution and the money raised thereon into the proper court, which shall decide the issue. Richardson, September 13, 1995, A.G. Op. #95-0229.

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d, Executions §§ 436, 439.

Complaint, petition, or declaration against sheriff and his surety for failure to pay judgment creditor moneys collected on execution sale, 22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Form 81.

Complaint on sheriff's bond for failure to pay over money received on execution, 18 Am. Jur. Pl & Pr Forms, Sheriffs, Police, and Constables, Forms 18:597-18:599.

CJS.

33 C.J.S., Executions §§ 426-429.

§ 13-3-183. Officer to restore money on injunction of execution.

When an officer shall receive under execution the whole or any part of the money for which the same was issued, and the defendant, before payment thereof to the plaintiff, obtain an injunction against the execution, the officer shall pay over to the defendant the money received, or such part thereof as may be enjoined. If an officer shall, when required, fail to pay over the money so received and enjoined to the person having a right to demand the same, such officer and his sureties shall be liable to the same remedies as are given by law to the plaintiff for the nonpayment of money levied on execution.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (16); 1857, ch. 61, art. 286; 1871, § 850; 1880, § 1766; 1892, § 3496; 1906, § 3994; Hemingway's 1917, § 3001; 1930, § 3047; 1942, § 1935.

Cross References — Bond required to stay proceedings at law, see § 11-13-3.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

§ 13-3-185. How purchaser takes property sold at execution sale.

The purchaser of any property sold at execution sale by the sheriff or other officer shall take the same discharge of all liens of judgments and decrees, whether the same be sold under an execution issued upon the elder or junior judgment or decree.

HISTORY: Codes, 1880, § 1763, 1892, § 3497; 1906, § 3995; Hemingway's 1917, § 3002; 1930, § 3048; 1942, § 1936.

Cross References — Sales of real estate ordered by decrees of the chancery court generally, see § 11-5-93.

Purchaser's title to certain interests of defendant sold under execution or attachment, see § 13-3-135.

Sales of lands under mortgages and deeds of trust generally, see § 89-1-55.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

The statute only applies where the judgments are against the same person. Hall v. Meridian Sav. Institution, 56 Miss. 674, 1879 Miss. LEXIS 189 (Miss. 1879).

RESEARCH REFERENCES

Am. Jur.

30 Am. Jur. 2d, Executions §§ 413 et seq.

CJS.

33 C.J.S., Executions §§ 464 et seq.

§ 13-3-187. Conveyance of land sold under execution or other process.

When lands are sold by virtue of any writ of execution or other process, the officer making the sale shall, on payment of the purchase-money, execute to the purchaser a conveyance which shall vest in the purchaser all the right, title and interest which the defendant had in and to such lands, and which, by law, could be sold under such execution or other process.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (55); 1857, ch. 61, art. 290; 1871, § 854; 1880, § 1769; 1892, § 3498; 1906, § 3996; Hemingway's 1917, § 3003; 1930, § 3049; 1942, § 1937.

Cross References — Form of conveyance of land sold by a sheriff under execution, see § 89-1-65.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

The return of an officer on an execution showing the sale of land to a designated person does not transfer the title, it only gives the purchaser the right to demand a deed conveying title. Jones v. Rogers, 85 Miss. 802, 38 So. 742, 1904 Miss. LEXIS 106 (Miss. 1904), overruled, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), writ of error dismissed, 214 U.S. 196, 29 S. Ct. 635, 53 L. Ed. 965, 1909 U.S. LEXIS 1908 (U.S. 1909).

OPINIONS OF THE ATTORNEY GENERAL

Consistent with Section 13-3-187, State should execute conveyance of property deeded to state as result of civil prosecution pursuant to Racketeer Influenced and Corrupt Organizations Act by patent, as authorized by Section 29-1-81, upon payment of purchase money. Nelson, March 23, 1994, A.G. Op. #94-0059.

RESEARCH REFERENCES

ALR.

Lien of purchaser at judicial or execution sale, where sale is void or is set aside because proceedings are imperfect or irregular. 142 A.L.R. 325.

Right of purchaser at execution sale, upon failure of title, to reimbursement or restitution from judgment creditor. 33 A.L.R.4th 1206.

Am. Jur.

30 Am. Jur. 2d, Executions §§ 363 et seq.

Certificate of sale, 9 Am. Jur. Pl & Pr Forms (Rev), Executions, Forms 131, 132.

CJS.

33 C.J.S., Executions §§ 449, 459 et seq.

§ 13-3-189. Completion of title under justice's execution.

The title to land sold under execution issued by a justice of the peace shall not be complete in the purchaser until he shall have obtained from the justice a certified transcript of the proceedings had before him in the suit, including a copy of the execution and the officer's return on it, which shall be filed with the conveyance made by the officer in the chancery clerk's office and recorded with the conveyance. Upon filing such transcript and conveyance for record in the chancery clerk's office of the county where the land lies, the title of the purchaser shall be as full and complete as if the sale had been under a judgment and execution from a circuit court.

HISTORY: Codes, 1880, § 2211; 1892, § 3499; 1906, § 3997; Hemingway's 1917, § 3004; 1930, § 3050; 1942, § 1938.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Time period within which an execution shall not issue on judgment of justice of the peace, see § 11-9-131.

Form of an execution issued on judgment of justice of the peace, see § 11-9-133.

Issuance, execution, and return of execution, see Miss. R. Civ. P. 69.

JUDICIAL DECISIONS

1. In general.

Absence of entries in docket of justice of peace showing that writ of attachment was issued, return of officer thereon, and mailing of notice to defendant in attachment, held not to invalidate proceedings under attachment, where proceedings were in all respects regular, especially where record of deed was accompanied by complete transcript of all proceedings showing every necessary step leading up to judgment and sale under attachment was taken. Walton v. Gregory Funeral Home, 170 Miss. 129, 154 So. 717, 1934 Miss. LEXIS 132 (Miss. 1934).

This statute must be strictly complied with in all substantial requirements to render a sale of land under execution from a justice of the peace valid. Foote-Patrick Co. v. Merkle, 116 Miss. 720, 77 So. 661, 1917 Miss. LEXIS 356 (Miss. 1917).

Where sales of land are made under judgment of a justice of the peace, the title is not complete until a certified transcript of the proceedings before the justice is filed with conveyance in the proper chancery clerk's office as provided by this section [Code 1942, § 1938]. Dunlap v. Fant, 74 Miss. 197, 20 So. 874, 1896 Miss. LEXIS 125 (Miss. 1896).

The "certified transcript" must include the docket entries, and, if these be correctly kept, need include nothing else. Hughston v. Cornish, 59 Miss. 372, 1882 Miss. LEXIS 119 (Miss. 1882).

RESEARCH REFERENCES

ALR.

Sheriff's deed as prima facie evidence of return. 36 A.L.R. 1001, 108 A.L.R. 672.

Jurisdiction of justice's court (or similar court) of action to foreclose lien on land. 115 A.L.R. 539.

Am. Jur.

30 Am. Jur. 2d, Executions §§ 363 et seq.

CJS.

33 C.J.S., Executions §§ 449, 459 et seq.

CHAPTER 5.

JURIES

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§ 13-5-1. Who are competent jurors; determination of literacy.

Every citizen not under the age of twenty-one years, who is either a qualified elector, or a resident freeholder of the county for more than one year, is able to read and write, and has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years and who is not a common gambler or habitual drunkard, is a competent juror. No person who is or has been within twelve months the overseer of a public road or road contractor shall, however, be competent to serve as a grand juror. The lack of any such qualifications on the part of one or more jurors shall not, however, vitiate an indictment or verdict. Moreover, no talesman or tales juror shall be qualified who has served as such talesman or tales juror in the last preceding two years, and no juror shall serve on any jury who has served as such for the last preceding two years. No juror shall serve who has a case of his own pending in that court, provided there are sufficient qualified jurors in the district, and for trial at that term.

In order to determine that prospective jurors can read and write, the presiding judge shall, with the assistance of the clerk, distribute to the jury panel a form to be completed personally by each juror prior to being empaneled as follows:

"1. Your name ________ Last ________ First ________ Middle initial
2. Your home address ________
3. Your occupation ________
4. Your age ________
5. Your telephone number ________ If none, write none
6. If you live outside the county seat, the number of miles you live from the courthouse ________ Miles

____
Sign your name"

The judge shall personally examine the answers of each juror prior to empaneling the jury and each juror who cannot complete the above form shall be disqualified as a juror and discharged.

A list of any jurors disqualified for jury duty by reason of inability to complete the form shall be kept by the circuit clerk and their names shall not be placed in the jury box thereafter until such person can qualify as above provided.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 1 (138); 1857, ch. 61, art. 126; 1871, § 724; 1880, § 1661; 1892, § 2354; 1906, § 2684; Hemingway's 1917, § 2176; 1930, § 2029; 1942, § 1762; Laws, 1894, ch. 69; Laws, 1914, ch. 208; Laws, 1938, ch. 303; Laws, 1962, ch. 308, § 1; Laws, 1968, ch. 335, § 1; Laws, 1970, ch. 339, § 1, eff from and after passage (approved April 2, 1970).

Cross References — Constitutional authority for the legislature to provide for qualifications of grand and petit jurors, see Miss. Const. Art. 14, § 264.

Compensation paid jurors and determination thereof, see §§ 25-7-61, 25-7-63.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Constitutionality.
3. Construction and application, generally.
4. Exclusion of women.
5. Exclusion of Afro-Americans.
6. Powers and function of court.
7. Examination on voir dire.
8. Qualifications of jurors.
9. —Qualified elector.
10. —Prior service as juror.
11. —Opinion and prior knowledge.
12. —Miscellaneous.
13. Want of qualification, effect of.

1. Validity.

The statute does not place improper restrictions as to who can serve on a jury and is not unconstitutional. Milano v. State, 790 So. 2d 179, 2001 Miss. LEXIS 110 (Miss. 2001).

The literacy requirements of this section are constitutional. Edwards v. State, 737 So. 2d 275, 1999 Miss. LEXIS 80 (Miss. 1999).

The literacy and age requirements of § 13-5-1 do not violate the constitutional rights of accused persons to be tried by an impartial jury. The literacy requirements of the statute are constitutional, and the statute does not bar persons over 65 years of age from serving on a jury, but merely grants those individuals the privilege to claim an exemption should they desire not to serve. Wilson v. State, 574 So. 2d 1324, 1990 Miss. LEXIS 845 (Miss. 1990).

Mississippi's exemption of jurors who

are illiterate or under 21 years of age, pursuant to § 13-5-1, or over 65 years of age, pursuant to § 13-5-25, did not violate the defendant's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Turner v. State, 573 So. 2d 657, 1990 Miss. LEXIS 792 (Miss. 1990), cert. denied, 500 U.S. 910, 111 S. Ct. 1695, 114 L. Ed. 2d 89, 1991 U.S. LEXIS 2522 (U.S. 1991).

Section 13-5-1 is not unconstitutional because it prevents those between the ages of 18 and 21 from serving on juries. Irving v. State, 498 So. 2d 305, 1986 Miss. LEXIS 2518 (Miss. 1986), cert. denied, 481 U.S. 1042, 107 S. Ct. 1986, 95 L. Ed. 2d 826, 1987 U.S. LEXIS 2032 (U.S. 1987).

With the variety of cases now in the courts and the multitude of written documents entered into evidence, the requirement that a juror be able to read and write is a reasonable and nondiscriminatory regulation which operates equally against all persons tried by juries, and is as essential to the state's obligation to afford an accused a fair trial as it is to assure a fair trial for the state. Terrell v. State, 262 So. 2d 179, 1972 Miss. LEXIS 1305 (Miss. 1972).

The question of whether this section [Code 1942, § 1762] is unconstitutional due to sex discrimination is now moot, since in its revised form it applies to every citizen without regard to sex. Willis v. Carson, 324 F. Supp. 1144, 1971 U.S. Dist. LEXIS 14114 (S.D. Miss. 1971).

Persons alleging discrimination in the jury selection system have the burden of proving it. Ford v. White, 299 F. Supp. 772, 1969 U.S. Dist. LEXIS 12607 (S.D. Miss. 1969).

Code 1942, §§ 1762, 1762-03, and 1766 which deal with the qualifications and selection of jurors are in pari materia and, when considered as a whole, are not void for vagueness. King v. Cook, 297 F. Supp. 99, 1969 U.S. Dist. LEXIS 9067 (N.D. Miss. 1969).

2. Constitutionality.

In a capital murder case, excusing a juror who responded affirmatively when asked if any jurors could not read or write did not violate defendant's constitutional right to an impartial jury; the requirement of Miss. Code Ann. § 13-5-1 that a juror be able to read and write is a reasonable and nondiscriminatory regulation that operates equally against all persons tried by juries. Dycus v. State, 875 So. 2d 140, 2004 Miss. LEXIS 366 (Miss. 2004), vacated, 544 U.S. 901, 125 S. Ct. 1589, 161 L. Ed. 2d 271, 2005 U.S. LEXIS 2212 (U.S. 2005).

The defendant, who was under 21 years old, was not denied his Sixth Amendment fair cross-section right by the fact that a qualified juror is defined, in part, as being over the age of 21. Williams v. State, 772 So. 2d 1113, 2000 Miss. App. LEXIS 572 (Miss. Ct. App. 2000).

3. Construction and application, generally.

To the extent that Fleming v. State, 687 So. 2d 146 (Miss. 1997) stands for the proposition that a violation of the first section of the statute requires an automatic reversal or invokes a presumption of prejudice, it is hereby overruled. Roberts Co. v. Moore, 214 So. 3d 202, 2017 Miss. LEXIS 80 (Miss. 2017).

Statute did not violate due process rights of appellant by excluding from jury service persons in his age group, 18 to 20 years; amendment of U.S. Constitution by Twenty-Sixth Amendment did not qualify persons under 21 years of age as jurors under state laws. Joyce v. State, 327 So. 2d 255, 1976 Miss. LEXIS 1768 (Miss. 1976).

Code 1942, §§ 1762, 1762-03, and 1766 which deal with the qualifications and selection of jurors are in pari materia and, when considered as a whole, are not void for vagueness. King v. Cook, 297 F. Supp. 99, 1969 U.S. Dist. LEXIS 9067 (N.D. Miss. 1969).

The direction given by Code 1942, § 1766 to the board of supervisors of the respective counties to select and list the names of qualified persons of good intelligence, sound judgment, and fair character is directive and shall be construed with the other sections of the Code relating to the selection of jurors. Reeves v. Reeves, 210 So. 2d 780, 1968 Miss. LEXIS 1521 (Miss. 1968).

Code 1942, §§ 1762, 1762-03, and 1766 with respect to the selection of jurors are in pari materia. Reed v. State, 199 So. 2d 803, 1967 Miss. LEXIS 1309 (Miss. 1967), cert. denied, 390 U.S. 413, 88 S. Ct. 1113, 19 L. Ed. 2d 1273, 1968 U.S. LEXIS 2174 (U.S. 1968).

4. Exclusion of women.

Rule that exclusion of women from jury service violates state criminal defendant's Sixth and Fourteenth Amendment rights to impartial jury trial held not to apply retroactively. Daniel v. Louisiana, 420 U.S. 31, 95 S. Ct. 704, 42 L. Ed. 2d 790, 1975 U.S. LEXIS 27 (U.S. 1975), overruled in part, Griffith v. Kentucky, 479 U.S. 314, 107 S. Ct. 708, 93 L. Ed. 2d 649, 1987 U.S. LEXIS 283 (U.S. 1987).

The requirement that a petit jury be selected from a representative cross section of the community, which is fundamental to the jury trial guaranteed by the Sixth Amendment, is violated by the systematic exclusion of women from jury panels. Taylor v. Louisiana, 419 U.S. 522, 95 S. Ct. 692, 42 L. Ed. 2d 690, 1975 U.S. LEXIS 2 (U.S. 1975).

A state criminal defendant's right to an impartial jury trial under the Sixth and Fourteenth Amendments is violated by the operation of a state's constitutional and statutory provisions which operate to exclude women from jury service. Taylor v. Louisiana, 419 U.S. 522, 95 S. Ct. 692, 42 L. Ed. 2d 690, 1975 U.S. LEXIS 2 (U.S. 1975).

The Fourteenth Amendment is not applicable on the issue as to whether or not women will be required to serve as jurors in a state court, the power to prescribe the qualifications of jurors being in the legislature, which may include or exclude women from jury duty. Smith v. State, 229 So. 2d 551, 1969 Miss. LEXIS 1246 (Miss. 1969).

A defendant appealing a conviction of rape did not have standing to raise the issue as to whether failure to include women as qualified jurors was in violation of his rights under the Fourteenth Amendment of the Constitution. Smith v. State, 229 So. 2d 551, 1969 Miss. LEXIS 1246 (Miss. 1969).

Where the jury for the term of court at which the defendant was tried was drawn prior to the effective date of the amendment permitting women to serve on juries, a motion to quash the indictment on the ground that women were excluded from the jury by statute was properly overruled. Gordon v. State, 222 So. 2d 141, 1969 Miss. LEXIS 1522 (Miss. 1969).

Limiting jury service to males and excluding women from such service does not constitute a denial to a female defendant of equal protection of the laws. White v. State, 214 So. 2d 467, 1968 Miss. LEXIS 1310 (Miss. 1968).

The exclusion of women from jury service does not constitute an invalid discrimination. Reed v. State, 199 So. 2d 803, 1967 Miss. LEXIS 1309 (Miss. 1967), cert. denied, 390 U.S. 413, 88 S. Ct. 1113, 19 L. Ed. 2d 1273, 1968 U.S. LEXIS 2174 (U.S. 1968).

Women are not required to perform jury duty in Mississippi; nor does the federal constitution require women to serve on juries in state courts. Shinall v. State, 199 So. 2d 251, 1967 Miss. LEXIS 1290 (Miss.), cert. denied, 389 U.S. 1014, 88 S. Ct. 590, 19 L. Ed. 2d 660, 1967 U.S. LEXIS 27 (U.S. 1967), overruled, Flowers v. State, 473 So. 2d 164, 1985 Miss. LEXIS 2140 (Miss. 1985).

Unlike classification by race, classification of persons eligible for jury duty on the basis of sex, applicable alike to all races, is not unconstitutional. Cobb v. Greenville, 187 So. 2d 861, 1966 Miss. LEXIS 1364 (Miss. 1966).

5. Exclusion of Afro-Americans.

The trial court in a narcotics prosecution did not err in overruling defendant's motion to quash the indictment and petit venire, which motion alleged that the statutory exclusion of persons 18, 19 and 20 years of age to serve on grand and petit juries violated defendant's federal constitutional rights and systematically excluded black persons from grand and petit juries; the fact that such age group has been permitted to register and vote by amendment to the U.S. Constitution did not qualify persons under 21 to serve as jurors under state law. Fermo v. State, 370 So. 2d 930, 1979 Miss. LEXIS 2028 (Miss. 1979).

The contention that there had been a systematic exclusion of Negroes and Indians from grand juries was not supported where, though names of prospective jurors had to be drawn from a list of voters or people owning real estate and it was difficult to get names of people who don't vote or own real property, and though there was a small number of Indians in the county, Indians and Negroes were on the venire from which the grand jury was chosen. Tubby v. State, 327 So. 2d 272, 1976 Miss. LEXIS 1780 (Miss. 1976).

Where county officials charged with grand jury selection knew or had reason to know that the voter registration lists failed to be representative of adult black males, they were under an affirmative duty to utilize a selection method which had the potential for yielding juries which represented a fair cross-section of the qualified citizens of the community, and this duty included a resort to the county land rolls as an additional source of qualified blacks. Ford v. Hollowell, 385 F. Supp. 1392, 1974 U.S. Dist. LEXIS 11740 (N.D. Miss. 1974).

Under-registration of Negroes on jury lists because of failure to register to vote does not constitute discrimination. Ford v. White, 299 F. Supp. 772, 1969 U.S. Dist. LEXIS 12607 (S.D. Miss. 1969).

The voter registration rolls of April 1966 of Quitman County were unconstitutionally tainted by the vestiges of a state-sanctioned discriminatory voter registration procedure, the effect of which was to prevent adequate representation of Negroes on the jury lists. King v. Cook, 298 F. Supp. 584, 1969 U.S. Dist. LEXIS 12753 (N.D. Miss. 1969).

Jurors are not to be summoned because of their race, but rather summoned without discrimination from all persons qualified as jurors, and where a record does not show a systematic exclusion of Negroes from jury service, the state has met the burden of proof necessary to show that there is no systematic exclusion of Negroes from the jury. Smith v. State, 229 So. 2d 551, 1969 Miss. LEXIS 1246 (Miss. 1969).

Where defendant's proof showed that a disproportion between Negroes and whites on the jury lists had existed over a long period of time, he had made out a prima facie case of the systematic exclusion of Negroes from the jury which indicted him, and it was incumbent upon the state to show that there was no systematic exclusion of Negroes from the grand jury and that defendant's constitutional rights were not infringed by the manner and procedure in which the grand jurors were drawn, and in the absence of such rebuttal testimony on the part of the state the presumption of purposeful prior exclusion stands and the motion to quash the indictment should have been sustained. Reeves v. Reeves, 210 So. 2d 780, 1968 Miss. LEXIS 1521 (Miss. 1968).

Allegations that because of the interrelationship between the racial restrictions of the Mississippi voter qualification laws and requirements with respect to the selection of grand and petit jurors a defendant would be denied his equal civil rights to trial by a jury free from exclusion were insufficient to justify the removal to the federal courts of the trial of a Negro charged with the crime of rape. Bass v. Mississippi, 381 F.2d 692, 1967 U.S. App. LEXIS 5438 (5th Cir. Miss. 1967).

In order for the state to sustain the burden of refuting the defendant's prima facie case that Negroes had been systematically excluded from the juries of the county in which he was tried, it must be shown that the board of supervisors had abandoned its former practice of systematic exclusion and that Negroes were currently being selected for jury service as other qualified citizens. Black v. State, 187 So. 2d 815, 1966 Miss. LEXIS 1355 (Miss. 1966).

Where the state did not sustain burden of refuting the prima facie case made by the defendant that Negroes had been systematically excluded from juries of Chickasaw County, the defendant's conviction could not be allowed to stand and the indictment against him was quashed and the cause remanded to await the action of a qualified grand jury summoned from a proper jury list. Black v. State, 187 So. 2d 815, 1966 Miss. LEXIS 1355 (Miss. 1966).

Issue whether Negroes were systematically excluded from grand and petit juries held waived by failure of competent counsel for Negro defendant to raise it in the trial court. Gordon v. State, 160 So. 2d 73 (Miss. 1964).

The complete exclusion from jury service, of Negroes in a county in which they are a majority, violates the constitutional rights of a Negro charged with crime. United States ex rel. Goldsby v. Harpole, 263 F.2d 71, 1959 U.S. App. LEXIS 4557 (5th Cir. Miss.), cert. denied, 361 U.S. 838, 80 S. Ct. 58, 4 L. Ed. 2d 78, 1959 U.S. LEXIS 522 (U.S. 1959), cert. denied, 361 U.S. 850, 80 S. Ct. 109, 4 L. Ed. 2d 89, 1959 U.S. LEXIS 613 (U.S. 1959).

Whether there has been a systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case. Cameron v. State, 233 Miss. 404, 102 So. 2d 355, 1958 Miss. LEXIS 397 (Miss. 1958).

The board of supervisors is not required to place in a jury box the names of all the Negroes who meet the qualifications for jury service, since they do not now and have never placed in a jury box for any one year the names of all the white men who meet such qualifications. Cameron v. State, 233 Miss. 404, 102 So. 2d 355, 1958 Miss. LEXIS 397 (Miss. 1958).

In a prosecution of a Negro for the rape of a white woman the conclusion of the trial judge, in passing upon the issue of fact presented by a motion to quash the indictment, that there had been no systematic, intentional, deliberate discrimination on account of race, was not manifestly wrong in view of the evidence. Cameron v. State, 233 Miss. 404, 102 So. 2d 355, 1958 Miss. LEXIS 397 (Miss. 1958).

The proof by a Negro defendant on a charge for an offense against a white person, that no Negro had served on a grand jury for the past thirty years is very strong evidence of purposeful racial discrimination in violation of the Fourteenth Amendment to the Constitution of the United States, which the state has the burden of disproving by showing that the names of Negroes were not placed in the jury box for some other reason than the fact that they are Negroes. Seay v. State, 212 Miss. 712, 55 So. 2d 430, 1951 Miss. LEXIS 499 (Miss. 1951).

In a prosecution of Negro defendant for felonious assault of white person where the evidence failed to disclose any reason for the absence of the names of Negroes in the jury boxes other than the mere fact that supervisors just did not place their names in the box, and no reason was given for the absence of the names of Negroes in the jury boxes, the conviction of the defendant will be reversed. Seay v. State, 212 Miss. 712, 55 So. 2d 430, 1951 Miss. LEXIS 499 (Miss. 1951).

Where, in a county the adult population of which is more than 35% Negro, no Negro has served on a grand or petit criminal court jury for 30 years, the inference of systematic exclusion is not sufficiently repelled by showing that a relatively small number of Negroes meet a requirement that a juror must be a qualified elector. Patton v. Mississippi, 332 U.S. 463, 68 S. Ct. 184, 92 L. Ed. 76, 1947 U.S. LEXIS 1545 (U.S. 1947).

Where murder indictment was quashed on ground that Negroes were omitted from jury box from which grand jury was drawn, defendant could not complain of trial court's refusal to quash second indictment on ground that grand jury was drawn from registration books and not from jury box. Pearson v. State, 176 Miss. 9, 167 So. 644, 1936 Miss. LEXIS 111 (Miss. 1936).

6. Powers and function of court.

Error of court in refusing to excuse jurors for cause in criminal case will not be considered on appeal where it appears from record that appellant used only five peremptory challenges and hence his peremptory challenges were not exhausted. Bone v. State, 207 Miss. 20, 41 So. 2d 347, 1949 Miss. LEXIS 314 (Miss. 1949).

Opinion of a juror formed on rumor does not disqualify him if he is fair and impartial. The trial judge should resolve all doubts as to juror's fairness, impartiality, and freedom from bias and prejudice in favor of the accused and the judgment of the circuit court as to qualifications of juror is prima facie correct. Donahue v. State, 142 Miss. 20, 107 So. 15, 1926 Miss. LEXIS 55 (Miss. 1926).

It is proper for the court to excuse the jailer. Hale v. State, 72 Miss. 140, 16 So. 387, 1894 Miss. LEXIS 88 (Miss. 1894).

7. Examination on voir dire.

Although a prospective juror did not initially disclose knowledge of defendant, this omission was later cured when the trial judge conducted a second voir dire and discovered the prospective juror and defendant were distantly related. The trial court did not abuse its discretion when it accepted the prospective juror's assurance that she could render a fair and impartial judgment. Johnson v. State, 224 So. 3d 549, 2017 Miss. App. LEXIS 104 (Miss. Ct. App. 2017).

Trail judge complied with this section by asking if anyone had a conviction resulting in imprisonment. Hall v. State, 201 So. 3d 424, 2016 Miss. LEXIS 540 (Miss. 2016).

Errors relating to the jury selection process were forfeited on appeal due to a failure to object contemporaneously below; at any rate, the outcome would have been the same because, while the trial court erred in appointing a foreperson, the trial court either did not commit error or cured other errors. Personal privilege exemptions had to be asserted by the individual, jurors who sat on a jury in the last two years could have been required to serve due to a lack of potential jurors, an error relating to a failure to complete the jury questionnaire was corrected during direct questioning at voir dire, and a juror's answer to a question about prior convictions fulfilled the statutory requirements. Hall v. State, — So. 3d —, 2016 Miss. LEXIS 125 (Miss. Mar. 17, 2016).

A trial court's discretion in passing upon the extent and propriety of questions addressed to prospective jurors is not unlimited and the Supreme Court will take note of abuse on appeal where prejudice to the accused is present. Williams v. State, 544 So. 2d 782, 1987 Miss. LEXIS 2843 (Miss. 1987).

Although the trial court properly condemned the conduct of a district attorney in asking jurors during voir dire whether or not they would vote guilty if the state proved its case and whether they would vote for death if the state proved that the aggravating circumstances outweighed the mitigating circumstances, the district attorney's conduct did not constitute reversible error where, in context with the jury instructions given to the jury by the trial judge, it was clear that the jurors were aware of their proper role in determining guilt and sentence. Williams v. State, 544 So. 2d 782, 1987 Miss. LEXIS 2843 (Miss. 1987).

A trial court cannot disparage the defense set up in the case before the jury trying the case. Leverett v. State, 112 Miss. 394, 73 So. 273, 1916 Miss. LEXIS 123 (Miss. 1916).

8. Qualifications of jurors.

Defendant's claims of error as to an allegedly illiterate juror were without merit because under Miss. Code Ann. § 13-5-1, a juror's illiteracy would not vitiate the verdict. Also the Mississippi Supreme Court has held that a person who can read and write only a few words is qualified as a juror and the record showed that the juror testified that he could read the Bible, road signs and "anything in Wal-Mart." Burnside v. State, 912 So. 2d 1018, 2005 Miss. App. LEXIS 204 (Miss. Ct. App.), cert. denied, 921 So. 2d 344, 2005 Miss. LEXIS 679 (Miss. 2005).

In a capital murder case, a court properly removed a juror from the panel where she stated that she could only fill out some of the form and she had her sister-in-law actually fill out the form for her. Scott v. State, 878 So. 2d 933, 2004 Miss. LEXIS 650 (Miss. 2004).

Issue raised at trial and on direct appeal from an inmate's capital murder conviction concerning the exclusion of a juror for failing to meet the qualifications of Miss. Code Ann. § 13-5-1 was found to be without merit, and the issue was therefore barred pursuant to Miss. Code Ann. § 99-39-21(2); because the trial court committed no error in excusing this juror and another juror for not meeting the qualifications under Miss. Code Ann. § 13-5-1, then the attorneys were not ineffective for failing to object to the jurors' dismissal, and in any event, the attorneys' decisions regarding the final composition of the jury were generally determined to be matters of trial strategy. Smith v. State, 877 So. 2d 369, 2004 Miss. LEXIS 547 (Miss. 2004).

Section 13-5-67 is read against the backdrop of the general rule that a party who fails to object to the jury's composition before it is impaneled waives any right to complain thereafter. The word "disqualified" in § 13-5-67 has breadth considerably beyond that of § 13-5-1's initial qualifications for jury service. Myers v. State, 565 So. 2d 554, 1990 Miss. LEXIS 294 (Miss. 1990).

The right to a jury of one's peers does not entitle the defendant in a criminal case to a jury which includes convicted felons or bootleggers. Shows v. State, 267 So. 2d 811, 1972 Miss. LEXIS 1428 (Miss. 1972).

The legislature has a right to impose reasonable qualifications for jurors when such qualifications do not violate the constitutional rights of accused persons to be tried by an impartial jury. Shows v. State, 267 So. 2d 811, 1972 Miss. LEXIS 1428 (Miss. 1972).

A defendant is entitled to be tried in a county where a reasonable proportion of the citizens are qualified for jury service. Magness v. State, 103 Miss. 30, 60 So. 8, 1912 Miss. LEXIS 136 (Miss. 1912).

9. —Qualified elector.

Juror who had paid one-half of his taxes on or before February 1, remaining half not being due under statute at time of murder trial, held, as respects payment of taxes, qualified juror. Myers v. State, 167 Miss. 76, 147 So. 308, 1933 Miss. LEXIS 96 (Miss. 1933).

10. —Prior service as juror.

Although defendant argued that the trial court committed reversible error by excusing two potential jurors because they had served on a jury in the past two years, rather than permitting those jurors the discretion to decide whether or not to serve, procedural bar aside, the error was harmless because defendant did not claim any constitutional violation or that he was in any manner prejudiced by the dismissal of the potential jurors. Gause v. State, 65 So. 3d 295, 2011 Miss. LEXIS 314 (Miss. 2011), limited, Hall v. State, 127 So. 3d 202, 2013 Miss. LEXIS 649 (Miss. 2013).

A member of an indicting grand jury may not serve on the defendant's petit jury. The accuser may not also be the trier of fact since such a practice is inconsistent with the constitutional requirement of an impartial jury. Hood v. State, 523 So. 2d 302, 1988 Miss. LEXIS 74 (Miss. 1988).

The fact that the foreman of the grand jury which indicted the defendant had also served on a petit jury in the circuit court approximately 6 months before did not vitiate the indictment and make it subject to be quashed, for the prohibition in this section [Code 1942, § 1762] specifically relates to talesmen or tales jurors who are served in the two preceding years and does not prohibit a qualified elector from serving as a grand juror or as foreman of a grand jury. Russell v. Bailey, 197 So. 2d 469, 1967 Miss. LEXIS 1525 (Miss. 1967).

Affidavit and allegation that defendant and his counsel did not know of the situation, is necessary with respect to motion for new trial on ground that trial juror was disqualified as having been member of indicting grand jury. Ratcliff v. State, 197 Miss. 289, 20 So. 2d 69, 1944 Miss. LEXIS 299 (Miss. 1944).

Defendant convicted in homicide prosecution, was not entitled to new trial on ground that a trial juror was disqualified as having been a member of the indicting grand jury, where neither defendant nor his counsel made affidavit that they did not know of the situation, and defendant failed to testify at the hearing on the motion, and where counsel's ignorance of the juror's identity persisted past the voir dire examination and escaped the admitted practice of scanning such jury list. Ratcliff v. State, 197 Miss. 289, 20 So. 2d 69, 1944 Miss. LEXIS 299 (Miss. 1944).

That portion of the statute relating to the service by a juror in the trial of as many as three cases does not apply to members of the regular panel. Louisville, N. O. & T. R. Co. v. Mask, 64 Miss. 738, 2 So. 360, 1887 Miss. LEXIS 100 (Miss. 1887).

A member of the grand jury which found the indictment is incompetent as a petit juror on the trial of the accused. Beason v. State, 34 Miss. 602, 1857 Miss. LEXIS 182 (Miss. 1857); House v. State, 96 Miss. 653, 51 So. 274, 1910 Miss. LEXIS 169 (Miss. 1910).

11. —Opinion and prior knowledge.

When a juror, who knew the victim's mother, swore that he would be impartial in defendant's trial for fondling, the trial court did not err in allowing the juror to sit on the jury. Wright v. State, 9 So. 3d

447, 2009 Miss. App. LEXIS 243 (Miss. Ct. App. 2009).

There was no ground for a new trial in the fact that one juror was an employee of one of the defendant's witnesses in a suit arising out of an automobile collision, where such witness was an engineer who had no interest whatever in the case but who made a map of the road where the accident occurred, and in testifying, simply identified the map as that made by him and stated nothing as to how or why the accident happened, since a juror is not rendered incompetent to sit in the trial of a case, by virtue of knowledge of incidental or collateral facts or facts about which there is no controversy. Wells v. Autry, 235 So. 2d 706, 1970 Miss. LEXIS 1463 (Miss. 1970).

The exclusion by the court, of its own motion, of a juror who heard part of former trial held not reversible error. Barnett v. State, 146 Miss. 893, 112 So. 586, 1927 Miss. LEXIS 255 (Miss. 1927).

Opinion of a juror formed on rumor does not disqualify him if he is fair and impartial, it being for the court to determine his fitness. Donahue v. State, 142 Miss. 20, 107 So. 15, 1926 Miss. LEXIS 55 (Miss. 1926).

12. —Miscellaneous.

Trial court properly failed to strike prospective jurors for cause because there was no showing that either juror had a close personal relationship with the victim's son, but rather, there was only a showing that the jurors and the son had worked together and that the brother of one of the jurors was friends with the son; the relationships disclosed were insufficient to disturb the trial court's judgment that both prospective jurors on their oaths could be impartial in defendant's trial. Patton v. State, 248 So. 3d 763, 2018 Miss. LEXIS 62 (Miss. 2018).

Trial court erred in granting a customer a new trial on the ground that one of the jurors was a convicted felon because it should not have relied upon the supreme court's opinion in a prior case since the customer made no claim and presented no proof of a constitutional violation; while the supreme court mandated a new trial where a juror was a convicted felon, it addressed a defendant's constitutional right to a fair and impartial jury and did not analyze the "vitiate" language of the statute. Roberts Co. v. Moore, 214 So. 3d 202, 2017 Miss. LEXIS 80 (Miss. 2017).

Denial of the inmate's petition for post-conviction relief under Miss. Code Ann. § 13-5-1 was proper where the issue was procedurally barred from being raised for the first time in that petition; further, inmate's contention was without merit because the record indicated that the inmate had affirmed the juror's presence after fully exploring her abilities to read, write, and comprehend English. Puckett v. State, 879 So. 2d 920, 2004 Miss. LEXIS 592 (Miss. 2004), cert. denied, 544 U.S. 924, 125 S. Ct. 1638, 161 L. Ed. 2d 483, 2005 U.S. LEXIS 2506 (U.S. 2005).

Persons convicted of infamous crimes are not competent to serve on juries. Fleming v. State, 687 So. 2d 146, 1997 Miss. LEXIS 2 (Miss. 1997), overruled in part, Roberts Co. v. Moore, 214 So. 3d 202, 2017 Miss. LEXIS 80 (Miss. 2017).

A trial judge in a murder prosecution did not err in refusing to exclude a juror after she had been accepted, even though the juror's daughter had been murdered six years earlier, where the attorneys inadvertently failed to ask the juror during voir dire whether a member of her family had been a victim of a crime, and therefore the juror neither withheld nor misrepresented information. Spivey v. Mowdy, 617 So. 2d 999, 1992 Miss. LEXIS 688 (Miss. 1992).

Under § 13-5-1, which declares ineligible jurors who have been "convicted of an infamous crime, or the unlawful sale of intoxicating liquor within a period of 5 years," a juror's competency was not corrupted by her husband's prior liquor-related convictions. Myers v. State, 565 So. 2d 554, 1990 Miss. LEXIS 294 (Miss. 1990).

The trial court did not err in refusing to declare a mistrial on the basis that a juror was unable to read and write, where the evidence on such issue was conflicting, thereby creating a factual dispute for resolution by the trial judge. Johnson v. State, 416 So. 2d 383, 1982 Miss. LEXIS 1935 (Miss. 1982).

The trial judge did not abuse his discretion in overruling defendant's motion to quash his indictment for breaking and entering with intent to commit rape on grounds that the husband of the prosecutrix and the wife of a first cousin of the husband of the prosecutrix were members of the grand jury which indicted the defendant, where the evidence showed that the husband of the prosecutrix was not present during deliberations concerning the charges against defendant and the other grand juror complained of, though present during the deliberations, did not "open her mouth," nor did she do anything to influence the other grand jurors. Southward v. State, 293 So. 2d 343, 1974 Miss. LEXIS 1785 (Miss. 1974).

Where a juror in a civil case told the trial judge that he did not at that time employ a lawyer but might have to do so if his son were indicted in another case, but that employment of a lawyer would have no effect on his deliberation, and the juror later employed one of the defense counsel in the civil case as his son's attorney, and the judge noted that he knew the juror to be an honest and upright person, there was no reversible error in the trial judge's failure to notify counsel with reference to what he had been told by the juror. Loden v. Joslin, 229 So. 2d 825, 1969 Miss. LEXIS 1256 (Miss. 1969).

It is only sale of intoxicating liquors within past five years that disqualifies person from jury service under this section [Code 1942, § 1762] and person is not disqualified from jury service by plea of guilty or by conviction of unlawful possession of intoxicating liquor in state courts or by being under bond to await action of federal grand jury for possession of intoxicating liquors on which federal tax had not been paid. Ferrell v. State, 208 Miss. 539, 45 So. 2d 127, 1950 Miss. LEXIS 272 (Miss. 1950).

Indictment in murder prosecution held not void because grand juror allegedly served both as election commissioner and grand juror in finding and presentment of indictment. Robinson v. State, 178 Miss. 568, 173 So. 451, 1937 Miss. LEXIS 228 (Miss. 1937).

A drunk man is incompetent. Guice v. State, 60 Miss. 714, 1883 Miss. LEXIS 2 (Miss. 1883); Louisville, N. O. & T. R. Co. v. Mask, 64 Miss. 738, 2 So. 360, 1887 Miss. LEXIS 100 (Miss. 1887).

An employee of one of the parties is incompetent as a juror. Hubbard v. Rutledge, 57 Miss. 7, 1879 Miss. LEXIS 2 (Miss. 1879).

13. Want of qualification, effect of.

Juror's service did not prejudice defendant, and her verdict and sentence would not be overturned because, although the juror had not been a resident of the county long enough to meet the qualification requirements of this statute, defendant's attorney did not object to the juror's admission on his juror card that he had only lived in the county for two months; despite knowing that the juror had only lived in the county for two months, when defendant and her attorney decided between challenging that juror or another juror with their last challenge, defendant's attorney chose the other juror and made no request for additional challenges; there was no evidence of fault on the juror's part; and he served as a fair and impartial juror. Dewitt v. State, 269 So. 3d 388, 2018 Miss. App. LEXIS 231 (Miss. Ct. App.), cert. denied, 258 So. 3d 286, 2018 Miss. LEXIS 528 (Miss. 2018).

Defendant was not entitled to a new trial when it was determined that one juror was a resident of Memphis, Tennessee, thereby violating the freeholder requirement of Miss. Code. Ann. § 13-5-1 (1972). By its own terms, the statute provides that a lack of qualifications on the part of a juror shall not vitiate a verdict. Wright v. State, 805 So. 2d 577, 2001 Miss. App. LEXIS 375 (Miss. Ct. App. 2001).

A defendant's motion for a new trial should have been granted where the parties stipulated that a juror had served in violation of § 13-5-1, which prohibits service of any juror who has a case pending in that court, and neither the state nor the defense was aware of such. Brown v. State, 529 So. 2d 537, 1988 Miss. LEXIS 197 (Miss. 1988).

Verdict of jury in prosecution for unlawful possession of intoxicating liquor is not invalid because one of jurors was not qualified elector, was not drawn, but was summoned by mistake, was accepted and served. Serio v. Brookhaven, 208 Miss. 620, 45 So. 2d 257, 1950 Miss. LEXIS 279 (Miss. 1950).

Inability of a juror to read and write does not disqualify him although unknown to defendant, so as to entitle defendant to a new trial. Huggins v. State, 103 Miss. 227, 60 So. 209, 1912 Miss. LEXIS 160 (Miss. 1912).

An objection that a juror was an alien and therefore not a qualified elector, cannot be made after verdict. Where it is not shown that the facts upon which an objection to a juror is based were unknown when the juror was accepted, the objection will be unavailing. Fulcher v. State, 82 Miss. 630, 35 So. 170, 1903 Miss. LEXIS 188 (Miss. 1903).

Under Const. 1890 § 264, as it formerly read, providing certain qualifications for jurors, but directing that the want thereof shall not vitiate any verdict, which section of the Constitution is substantially embodied in this section [Code 1942, § 1762], it is not cause for reversing a conviction of murder that it was discovered after the verdict that one of the jurors was not a qualified elector and had not been drawn on the venire but had been summoned by mistake in place of a person by the same name who was drawn. Complaint may be made only where that occurs which impugns the fairness of the trial. Tolbert v. State, 71 Miss. 179, 14 So. 462, 1893 Miss. LEXIS 185 (Miss. 1893).

Const. 1890 § 264, as that section formerly read, declaring that "the want of such qualification in any juror shall not vitiate any indictment or verdict," which section of the Constitution is substantially embodied in this section [Code 1942, § 1762], does not apply where the judgment is assailed because of the court's action in overruling an exception seasonably made to a juror. Nail v. State, 70 Miss. 32, 11 So. 793, 1892 Miss. LEXIS 79 (Miss. 1892).

OPINIONS OF THE ATTORNEY GENERAL

Only those persons who are registered to vote in state and local elections should be included on the certified list of registered voters. Those voters who are registered to vote pursuant to the National Voter Registration Act only are not registered to vote in state and local elections and therefore should not be included on the certified voter registration list certified by the circuit clerk for purposes of jury selection. See Sections 13-5-8 and 13-5-4(d). Carpenter, January 10, 1996, A.G. Op. #96-0002.

RESEARCH REFERENCES

ALR.

Proof as to exclusion of or discrimination against eligible class or race in respect to jury in criminal case. 1 A.L.R.2d 1291.

Separation of jury in criminal case. 21 A.L.R.2d 1088.

Mandamus or prohibition as remedy to enforce right to jury trial. 41 A.L.R.2d 780.

Juror's previous knowledge of facts of civil case as disqualification. 73 A.L.R.2d 1312.

Disqualification, as jurors, of resident or taxpayers of litigating political subdivision. 81 A.L.R.2d 708.

Use of intoxicating liquor by jurors: civil cases. 6 A.L.R.3d 934.

Grand jury: Admission of hearsay evidence incompetent at trial as affecting, in absence of statutory regulation, validity of indictment or conviction. 37 A.L.R.3d 612.

Propriety and prejudicial effect, in criminal case, of placing jury in charge of officer who is a witness in the case. 38 A.L.R.3d 1012.

Jury: membership in racially biased or prejudiced organization as proper subject of voir dire inquiry or ground for challenge. 63 A.L.R.3d 1052.

Juror's voir dire denial or nondisclosure of acquaintance or relationship with attorney in case, or with partner or associate of such attorney, as ground for new trial or mistrial. 64 A.L.R.3d 126.

Competency of juror as affected by his membership in co-operative association interested in the case. 69 A.L.R.3d 1296.

Similarity of occupation between proposed juror and alleged victim of crime as affecting juror's competency. 71 A.L.R.3d 974.

Law enforcement officers as qualified jurors in criminal case. 72 A.L.R.3d 895.

Former law enforcement officers as qualified jurors in criminal cases. 72 A.L.R.3d 958.

Validity of enactment requiring juror to be an elector or voter or have qualifications thereof. 78 A.L.R.3d 1147.

Religious belief, affiliation, or prejudice of prospective juror as proper subject of inquiry or ground for challenge on voir dire. 95 A.L.R.3d 172.

Jury: visual impairment as disqualification. 48 A.L.R.4th 1154.

Fact that juror in criminal case, or juror's relative or friend, has previously been victim of criminal incident as ground of disqualification. 65 A.L.R.4th 743.

Use of peremptory challenges to exclude Caucasian persons, as a racial group, from criminal jury–post-Batson state cases. 47 A.L.R.5th 259.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

Exclusion of women from grand or trial jury or jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction – state cases. 70 A.L.R.5th 587.

Disqualification or exemption of juror for conviction of, or prosecution for, criminal offense. 75 A.L.R.5th 295.

Prejudical effect of juror's inability to comprehend English. 117 A.L.R.5th 1.

Purposeful inclusion of Negroes in grand or petit jury as unconstitutional discrimination. 4 A.L.R. Fed. 449.

Am. Jur.

38 Am. Jur. 2d, Grand Jury §§ 9 et seq.

47 Am. Jur. 2d, Jury §§ 126- 140.

CJS.

38A C.J.S., Grand Juries §§ 11, 24-36.

50 C.J.S., Juries §§ 262, 263, 268, 278-285, 426.

Lawyers' Edition.

Prospective juror in capital case whose views on death penalty would prevent or impair performance of duties as juror held subject to exclusion for cause. 80 L. Ed. 2d 841.

Law Reviews.

1989 Mississippi Supreme Court Review: Voir Dire. 59 Miss. L. J. 865, Winter, 1989.

§ 13-5-2. Public policy stated.

It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with this chapter to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose. A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.

HISTORY: Laws, 1974, ch 378, § 1, eff from and after Jan. 1, 1975.

Editor's Notes — Section 12 of Chapter 378, Laws of 1974, which chapter enacted this section, reads as follows:

"SECTION 12. This act shall take effect and be in force from and after January 1, 1975, except that jurors shall continue to be drawn in accordance with the provisions of present law until implementation of the juror selection procedure herein provided for in April 1975."

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Peremptory challenges.
3. Random selection.
4. No systematic exclusion.

1. In general.

Although provisions for jury selection are merely directory, courts must make every reasonable effort to comply with the statutory method of drawing, selecting and serving jurors; the jury system must remain untainted and beyond suspicion. Avery v. State, 555 So. 2d 1039, 1990 Miss. LEXIS 7 (Miss. 1990), overruled, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

In civil jury trial in Federal District Court, equal protection component of Fifth Amendment due process clause prohibits private litigant from using peremptory challenge to exclude prospective jurors on account of race because such race-based exclusion violates equal protection rights of excluded jurors; opposing litigant has third-party standing to raise excluded jurors' rights in opposing litigant's own behalf; and, while role of litigants in determining jury's composition may provide one reason for wide acceptance of jury system and its verdicts, if race stereotypes are price for acceptance of jury panel, price is too high to meet standard of constitution. Edmonson v. Leesville Concrete Co., 500 U.S. 614, 111 S. Ct. 2077, 114 L. Ed. 2d 660, 1991 U.S. LEXIS 3023 (U.S. 1991).

"Significant period of time" for purposes of determining federal constitutional violation is not limited to period of time after passage of Miss. Jury Selection Act which was a step forward in eradicating racial discrimination in selection of juries; plaintiff black state prisoner indicted for and convicted of murder who claimed denial of equal protection because for 20 year period up to and including his indictment all 42 grand jury foremen appointed by circuit judges of county he was indicted were white even though population of county was 43% black, established prima facie case of racial discrimination in county, which State failed to rebut inasmuch as its rebuttal testimony merely indicated that judges in county never indicated to circuit clerk that they selected grand jury foremen based on race, and testimony neither denied use of racial criteria nor advanced any other objective non-discriminatory criteria; and conviction would be vacated. Johnson v. Puckett, 929 F.2d 1067, 1991 U.S. App. LEXIS 7522 (5th Cir. Miss.), cert. denied, 502 U.S. 898, 112 S. Ct. 274, 116 L. Ed. 2d 226, 1991 U.S. LEXIS 5358 (U.S. 1991).

Although persons over 65 years of age and persons who have served on a jury within 2 years are exempt from jury service under § 13-5-25, neither the circuit court nor the deputy circuit clerk have authority to act unilaterally and strike such persons from the jury list. Such persons are eligible for jury service and have every lawful right and authority to serve if called and selected. When their names are drawn, such persons must be summoned the same as other prospective jurors and no one has authority to exempt any such juror from service unless he or she claims the privilege and asks to be excused. Thus, a judgment of conviction and sentence was reversed where the deputy circuit clerk unilaterally struck from the jury list all persons over 65 years of age and all persons who had served on a jury within the 2 preceding years. Adams v. State, 537 So. 2d 891, 1989 Miss. LEXIS 28 (Miss. 1989).

A defendant indicted by a county grand jury on various drug-related offenses was not entitled to removal of the indictments to federal court, notwithstanding his contention that the grand juries were illegally constituted in that blacks had not been considered for appointment as forepersons, where state law clearly provided that no one could be excluded from jury service because of race and where there was no equivalent basis for a prediction that defendant could not enforce his federal rights in state court. Williams v. Mississippi, 608 F.2d 1021, 1979 U.S. App. LEXIS 9387 (5th Cir. Miss. 1979), cert. denied, 449 U.S. 804, 101 S. Ct. 49, 66 L. Ed. 2d 8, 1980 U.S. LEXIS 2550 (U.S. 1980).

In a homicide prosecution, the trial judge correctly overruled a defense motion to quash the indictment, venire and panel on the ground that blacks and women were systematically excluded from serving as grand jury foremen, where Mississippi followed the "random" method of jury selection and where the evidence was insufficient to establish a prima facie case of discrimination in the selection of jury foremen by trial judges. Herring v. State, 374 So. 2d 784, 1979 Miss. LEXIS 2347 (Miss. 1979).

2. Peremptory challenges.

In a robbery case, the trial court's ruling denying defendant's Batson challenge against the State's peremptory strike of a member of the venire was not clearly erroneous or against the overwhelming weight of the evidence. Payne v. State, 207 So. 3d 1282, 2016 Miss. App. LEXIS 493 (Miss. Ct. App. 2016).

Mississippi caselaw did not extend the Batson protection to religiously based peremptory strikes of jurors; the only objection offered by defendant was a Batson objection. Because defendant did not object that religiously based peremptory strikes violated Miss. Const. Art. 3, § 18 and Miss. Code Ann. § 13-5-2, the trial judge did not err in accepting the reason offered by the State as a race-neutral reason not prohibited by Batson. Jackson v. State, 910 So. 2d 658, 2005 Miss. App. LEXIS 170 (Miss. Ct. App.), cert. denied, 904 So. 2d 184, 2005 Miss. LEXIS 402 (Miss. 2005).

Peremptory challenges to jurors may not be exercised to exclude a juror on the basis of race, color, religion, sex, national origin, or economic status. Thorson v. State, 721 So. 2d 590, 1998 Miss. LEXIS 392 (Miss. 1998).

3. Random selection.

In a drug case, a trial court did not err by denying a motion to quash the venire due to the fact that less than three percent were minorities; there was no evidence to show that the jury was not selected at random under Miss. Code Ann. § 13-5-2. Magee v. State, 951 So. 2d 589, 2007 Miss. App. LEXIS 123 (Miss. Ct. App. 2007).

In defendant's trial for the sale of cocaine, defendant failed to make a prima facie showing that the fair cross-section requirement was violated; defendant also failed to show that there was a systematic exclusion of blacks from the jury pool. Yarbrough v. State, 911 So. 2d 951, 2005 Miss. LEXIS 610 (Miss. 2005).

Where defendant failed to show that the under-representation of a racial group on his jury was based on a systematic exclusion in selection of the jury venire, defendant was not denied a jury that was a fair cross-section of the community. Pratt v. State, 870 So. 2d 1241, 2004 Miss. App. LEXIS 273 (Miss. Ct. App. 2004).

4. No systematic exclusion.

Defendant's conviction for the sale of cocaine was appropriate because a single venire wherein a distinctive group was underrepresented did not constitute systematic exclusion of that group from the jury-selection process. Simmons v. State, 13 So. 3d 844, 2009 Miss. App. LEXIS 471 (Miss. Ct. App. 2009).

RESEARCH REFERENCES

ALR.

Proof as to exclusion or discrimination against eligible class or race in respect to jury in criminal case. 1 A.L.R.2d 1291.

Exclusion of attorneys from jury list in criminal cases. 32 A.L.R.2d 890.

Racial or ethnic prejudice of prospective jurors as proper subject of inquiry or ground of challenge on voir dire in state criminal case. 94 A.L.R.3d 15.

Propriety of asking prospective female jurors questions on voir dire not asked of prospective male jurors, or vice versa. 39 A.L.R.4th 450.

Use of peremptory challenges to exclude Caucasian persons, as a racial group, from criminal jury–post-Batson state cases. 47 A.L.R.5th 259.

Use of peremptory challenges to exclude persons from criminal jury based on religious affiliation – post-Batson state cases. 63 A.L.R.5th 375.

Exclusion of women from grand or trial jury or jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction – state cases. 70 A.L.R.5th 587.

Purposeful inclusion of Negroes in grand or petit jury as unconstitutional discrimination justifying relief in Federal Court. 4 A.L.R. Fed. 449.

Am. Jur.

38 Am. Jur. 2d, Grand Jury §§ 8-10, 19, 21.

9 Am. Jur. Proof of Facts 2d, Discrimination in Jury Selection – Systematic Exclusion or Underrepresentation of Identifiable Group, §§ 19 et seq. (proof of systematic underrepresentation of identifiable group in selection of prospective jurors).

CJS.

38A C.J.S., Grand Juries §§ 11, 18-20, 22-35.

50 C.J.S., Juries §§ 263, 278-280, 284-301, 310-322.

§ 13-5-3. Repealed.

Repealed by Laws of 1974, ch 378, § 11, eff from and after Jan. 1, 1975.

[Codes, Hutchinson's 1848, ch. 61, art. 8 (1); 1857, ch. 61, arts. 128, 135; 1871, §§ 726, 736; 1880, § 1681; 1892, § 2358; 1906, § 2688; Hemingway's 1917, § 2180; 1930, § 2033; 1942, § 1766; Laws, 1896, ch. 84; Laws, 1938, ch. 298; Law, 1938, Ex. ch. 84; Laws, 1962, ch. 308, § 2; Laws, 1964, ch. 326; Laws, 1968, ch. 338, § 1]

Editor's Notes — Former § 13-5-3 specified how the list of jurors was to be procured.

§ 13-5-4. Definitions.

As used in this chapter:

(a) "Court" means the circuit, chancery and county courts of this state and includes, when the context requires, any judge of the court.

(b) "Clerk" and "clerk of the court" means the circuit clerk of the county and any deputy clerk.

(c) "Master list" means the voter registration lists for the county.

(d) "Voter registration lists" means the official records of persons registered to vote in the county.

(e) "Jury wheel" means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors.

(f) "Jury box" means the jury wheel in which is placed the names or identifying numbers of prospective jurors whose names are drawn at random from the jury wheel and who are not disqualified.

(g) "Senior judge" means the circuit or chancery judge, as the case may be, who has the longest continuous service on the court in a particular judicial district which has more than one (1) such judge, or if the judges are equal in time of service, then the judge who has been engaged for the longest time continuously in the practice of law in this state.

HISTORY: Laws, 1974, ch. 378, § 2, eff from and after Jan. 1, 1975.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

OPINIONS OF THE ATTORNEY GENERAL

Only those persons who are registered to vote in state and local elections should be included on the certified list of registered voters. Those voters who are registered to vote pursuant to the National Voter Registration Act only are not registered to vote in state and local elections and therefore should not be included on the certified voter registration list certified by the circuit clerk for purposes of jury selection. See Sections 13-5-1, 13-5-8 and 13-5-4(d). Carpenter, January 10, 1996, A.G. Op. #96-0002.

RESEARCH REFERENCES

ALR.
Validity of requirement or practice of selecting prospective jurors exclusively from list of registered voters. 80 A.L.R.3d 869.

Am. Jur.
38 Am. Jur. 2d, Grand Jury §§ 1, 3.
47 Am. Jur. 2d, Jury §§ 1, 40.

CJS.
38A C.J.S., Grand Juries §§ 2-5, 9, 108, 109.
50A C.J.S., Juries §§ 1, 2.

§ 13-5-5. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, eff from and after Jan. 1, 1975. [Codes, 1942, § 1762-01; Laws, 1964, ch. 327, § 1]

Editor's Notes — Former § 13-5-5 provided a procedure by which resident freeholders not qualified as electors could be made competent jurors by court order.

§ 13-5-6. Jury commission—number, appointment, terms, qualifications, and compensation of members.

(1) A jury commission shall be established in each county to manage the jury selection process under the supervision and control of the court. The jury commission shall be composed of three (3) members who will serve a four-year term beginning on January 1, 1975, as follows: One (1) member shall be appointed by the circuit judge of said county; one (1) member shall be appointed by the chancery judge of said county; and one (1) member shall be appointed by the board of supervisors of said county. If there is more than one (1) circuit or chancery judge in a judicial district, then the senior circuit or chancery judge, as the case may be, shall make the said appointment for each county in his district. Any unexpired term shall be filled by the appropriate appointing authority who is in office at the time the vacancy occurs.

(2) A jury commissioner shall have the following qualifications:

(a) He shall be a duly qualified elector at the time of his appointment;

(b) He shall be a resident citizen in the county in which he is to serve; and

(c) He shall not be an attorney nor an elected public official.

(3) Each jury commissioner shall receive compensation at a per diem rate as provided in Section 25-3-69.

HISTORY: Laws, 1974, ch. 378, § 3; Laws, 1989, ch. 395, § 1, eff from and after January 1, 1990.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

OPINIONS OF THE ATTORNEY GENERAL

An individual cannot continue to serve as jury commissioner and as a member of the board of aldermen at the same time. Tucker, July 8, 2005, A.G. Op. 05-0335.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d, Jury §§ 106- 108.

CJS.
38A C.J.S., Grand Juries §§ 42, 44.
50 C.J.S., Juries §§ 270, 312.

§ 13-5-7. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, eff from and after Jan. 1, 1975. [Codes, 1942, § 1762-02; Laws, 1964, ch. 327, § 2; Laws, 1968, ch. 336, § 1]

Editor's Notes — Former § 13-5-7 specified who were competent jurors after entry of a court order provided for in former § 13-5-5.

§ 13-5-8. Master list consisting of county voter registration list to be compiled and maintained; exclusion of persons permanently excused from jury service from list; reinstatement of permanently excused persons.

(1) In April of each year, the jury commission for each county shall compile and maintain a master list consisting of the voter registration list for the county.

(2) The circuit clerk of the county and the registrar of voters shall have the duty to certify to the commission during the month of January of each year under the seal of his office the voter registration list for the county; the list shall exclude any person who has been permanently excused from jury service pursuant to Section 13-5-23(4). Any person who has been excluded from the master list for jury service may be reinstated to the master list after one (1) year by requesting that the circuit clerk reinstate him to the master list.

HISTORY: Laws, 1974, ch. 378, § 4; Laws, 2010, ch. 456, § 1, eff from and after July 1, 2010.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

OPINIONS OF THE ATTORNEY GENERAL

Only those persons who are registered to vote in state and local elections should be included on the certified list of registered voters. Those voters who are registered to vote pursuant to the National Voter Registration Act only are not registered to vote in state and local elections and therefore should not be included on the certified voter registration list certified by the circuit clerk for purposes of jury selection. See Sections 13-5-1 and 13-5-4(d). Carpenter, January 10, 1996, A.G. Op. #96-0002.

The master voter registration list of persons available for selection on juries should not include the names of persons who are on the National Voter Registration Act "inactive" list. Carpenter, March 6, 1998, A.G. Op. #98-0124.

Maintenance of the master list means that the list is not to include the names of individuals no longer eligible to serve on a jury. Ashley, March 17, 2000, A.G. Op. #2000-0117.

RESEARCH REFERENCES

ALR.

Exclusion of attorneys from jury list in criminal cases. 32 A.L.R.2d 890.

Inclusion or exclusion or first and last days in computing time for jury drawing, or furnishing of jury list, which must take place a certain number of days before a known future date. 98 A.L.R.2d 1421.

Validity of requirement or practice of selecting prospective jurors exclusively from list of registered voters. 80 A.L.R.3d 869.

Am. Jur.

38 Am. Jur. 2d(Rev), Grand Jury §§ 8, 10, 19, 21.

47 Am. Jur. 2d, Jury §§ 102- 104, 108, 110- 113, 115, 131, 134.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Forms 91-112 (selection, drawing, and summoning of jurors).

CJS.

38A C.J.S., Grand Juries §§ 39–45.

50 C.J.S., Juries §§ 266-270, 298, 307-310.

§ 13-5-9. Repealed.

Repealed by Laws of 1974, ch. 378, § 2, eff from and after Jan. 1, 1975.

[Codes, 1942, § 1762-03; Laws, 1964, ch. 327, § 3; Am Laws, 1972, ch. 372, § 2]

Editor's Notes — Former § 13-5-9 provided an alternate procedure by which lists of jurors were to be procured under the alternative procedures of former § 13-5-5.

§ 13-5-10. Jury wheel; selection and deposit of names or identifying numbers of prospective jurors; number required; refilling.

The jury commission for each county shall maintain a jury wheel into which the commission shall place the names or identifying numbers of prospective jurors taken from the master list. If the total number of prospective jurors on the master list is one thousand (1,000) or less, the names or identifying numbers of all of them shall be placed in the jury wheel. In all other cases, the number of prospective jurors to be placed in the jury wheel shall be one thousand (1,000) plus not less than one percent (1%) of the total number of names on the master list. From time to time a larger or additional number may be determined by the jury commission or ordered by the court to be placed in the jury wheel. In April of each year, beginning in 1976, the wheel shall be emptied and refilled as prescribed in this chapter.

HISTORY: Laws, 1974, ch. 378, § 5(1), eff from and after Jan. 1, 1975.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d, Jury §§ 104, 105.
9 Am. Jur. Proof of Facts 2d, Discrimination in Jury Selection – Systematic Exclusion or Underrepresentation of Identifiable Group, §§ 19 et seq. (proof of systematic underrepresentation of identifiable group in selection of prospective jurors).

CJS.
50 C.J.S., Juries §§ 308-309.

§ 13-5-11. Repealed.

Repealed by Laws, 1974, ch. 378, § 11, eff from and after Jan. 1, 1975. [Codes, 1942, § 1762-04; Laws, 1964, ch. 327, § 4]

Editor's Notes — Former § 13-5-11 stated when the alternate procedures pertaining to jurors set forth in former §§ 13-5-5, 13-5-7 and 13-5-9 became operative.

§ 13-5-12. Jury wheel—selection and deposit of names or identifying numbers of prospective jurors—procedure where less than all names on master list used.

Unless all the names on the master list are to be placed in the jury wheel pursuant to Section 13-5-10, the names or identifying numbers of prospective jurors to be placed in the jury wheel shall be selected by the jury commission at random from the master list in the following manner: The total number of names on the master list shall be divided by the number of names to be placed in the jury wheel; the whole number nearest the quotient shall be the "key number," except that the key number shall never be less than two (2). A "starting number" for making the selection shall then be determined by a random method from the number from one (1) to the key number, both inclusive. The required number of names shall then be selected from the master list by taking in order the first name on the master list corresponding to the starting number and then successively the names appearing in the master list at intervals equal to the key number, recommencing if necessary at the start of the list until the required number of names has been selected. The name of any person who is under the age of twenty-one (21) years and the name of any person who has been permanently excused from jury service pursuant to Section 13-5-23(4) shall be passed over without interrupting the sequence of selection. Any person who has been excluded from the master list for jury service may be reinstated to the master list after one (1) year by requesting that the circuit clerk reinstate him to the master list. Upon recommencing at the start of the list, names previously selected from the master list shall be disregarded in selecting the additional names. The jury commission may use an electronic or mechanical system or device in carrying out its duties.

HISTORY: Laws, 1974, ch. 378, § 5(2); Laws, 2010, ch. 456, § 2, eff from and after July 1, 2010.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

OPINIONS OF THE ATTORNEY GENERAL

It is not necessary to maintain physical jury wheel and jury box if clerk is using computer, as long as clerk is capable of printing out physical record of contents of jury wheel and jury box if it becomes necessary to do so. Salazar, Dec. 3, 1992, A.G. Op. #92-0901.

§ 13-5-13. Repealed.

Repealed by Laws, 1974, ch. 378, § 11, eff from and after Jan. 1, 1975.

[Codes, 1880, § 1682; 1892, § 2359; 1906, § 2689; Hemingway's 1917, § 2181; 1930, § 2034; 1942, § 1767]

Editor's Notes — Former § 13-5-13 specified the number of names to be contained on the jury list.

§ 13-5-14. List of names placed in jury wheel to be delivered to senior circuit judge—minute entry.

At any time the jury commission places names in the jury wheel, the jury commission shall also deliver to the senior circuit judge a list of all names placed on or in the jury wheel, and said circuit judge shall spread upon the minutes of the circuit court all of the names so placed in the jury wheel.

HISTORY: Laws, 1974, ch. 378, § 5(3), eff from and after Jan. 1, 1975.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d(Rev), Jury §§ 104, 105, 110, 123, 146, 226, 227, 251.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Forms 91-112 (selection, drawing, and summoning of jurors).

CJS.

50 C.J.S., Juries §§ 289, 308, 324, 328, 329, 333, 335, 336, 417.

§ 13-5-15. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, eff from and after Jan. 1, 1975.

[Codes, Hutchinson's 1848, ch. 61, art. 8 (1); 1857, ch. 61, art. 135; 1871, § 736; 1880, § 1684; 1892, § 2360; 1906, § 2690; Hemingway's 1917, § 2182; 1930, § 2035; 1942, § 1768]

Editor's Notes — Former § 13-5-15 provided that the jury list be delivered to the clerk of the circuit court, filed, and not thereafter altered.

§ 13-5-16. Random drawing of names or identifying numbers of prospective jurors; alphabetical list; prohibition against disclosure of names drawn; use of computer or electronic device for random selection.

(1) Except as otherwise provided by subsection (2) of this section, from time to time and in a manner prescribed by the court, a private citizen who does not have an interest in a case pending trial and who is not a practicing attorney publicly shall draw at random from the jury wheel the names or identifying numbers of as many prospective jurors as the court by order requires. The clerk shall prepare an alphabetical list of the names drawn. Neither the names drawn nor the list shall be disclosed to any person other than pursuant to this chapter or specific order of the court.

(2) The court may order that the drawing of names or identifying numbers pursuant to subsection (1) of this section may be performed by random selection of a computer or electronic device pursuant to such rules and regulations as may be prescribed by the court.

HISTORY: Laws, 1974, ch. 378, § 5(4); Laws, 1986, ch. 312, § 1, eff from and after July 1, 1986.

Cross References — Application of this section to selection of jurors for state grand jury, see § 13-7-15.

Selection and service of jurors, see Miss. R. Civ. P. 47.

JUDICIAL DECISIONS

1. In general.

In a homicide prosecution, the trial judge correctly overruled a defense motion to quash the indictment, venire and panel on the ground that blacks and women were systematically excluded from serving as grand jury foremen, where Mississippi followed the "random" method of jury selection and where the evidence was insufficient to establish a prima facie case of discrimination in the selection of jury foremen by trial judges. Herring v. State, 374 So. 2d 784, 1979 Miss. LEXIS 2347 (Miss. 1979).

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Jury §§ 104, 105, 108, 120, 199, 220.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Forms 91-112 (selection, drawing, and summoning of jurors).

CJS.

50 C.J.S., Juries §§ 308, 324, 328, 329, 333, 335, 336, 417.

§ 13-5-17. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, eff from and after Jan. 1, 1975.

[Codes, 1857, ch. 61, art. 139; 1871, § 740; 1880, § 1688; 1892, § 2362; 1906, § 2691; Hemingway's 1917, § 2183; 1930, § 2036; 1942, § 1769]

Editor's Notes — Former § 13-5-17 provided that the slips containing the names of the jurors not serving were to be returned to the box.

§ 13-5-18. Telephone answering device required; cost of device.

The clerk of the circuit court in each county shall purchase and install a telephone answering device for the purpose of providing a recorded message after 5:00 p.m. to jurors who have been summoned to jury duty, in order for such jurors to inquire as to whether their presence will be required in court the following day. The cost of purchasing and maintaining said telephone answering device shall be paid by the board of supervisors from the county general fund.

HISTORY: Laws, 1989, ch. 395, § 3, eff from and after January 1, 1990.

§ 13-5-19. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, eff from and after Jan. 1, 1975.

[Codes, 1880, § 1690; 1892, § 2364; 1906, § 2693; Hemingway's 1917, § 2185; 1930, § 2038; 1942, § 1771]

Editor's Notes — Former § 13-5-19 provided for the making and keeping of a list of jurors who did not serve.

§ 13-5-21. Jury list in counties with two circuit court districts.

In counties where there are two (2) circuit court districts, the jury commission shall make a list of jurors for each district in the manner directed for a county, and the same shall be treated in all respects as for an entire county. In such counties a juror shall not be required to serve out of his district, except should the court, in its discretion, otherwise direct, and except when drawn on a special venire. In either of such excepted cases, the jury shall be drawn from the two (2) jury boxes if the court so direct, one (1) name for each alternately.

HISTORY: Codes, 1871, § 755; 1880, § 1689; 1892, § 2363; 1906, § 2692; Hemingway's 1917, § 2184; 1930, § 2037; 1942, § 1770; Laws, 1904, ch. 151; Laws, 1974, ch. 378, § 8, eff from and after Jan. 1, 1975.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury selection.

1. In general.

In defendant's trial for wire fraud, the trial court properly ordered the circuit court clerk to draw the jury from both judicial districts within the county in order to expand the jury pool, and to be certain that a fair and impartial jury as nearly as possible, could be impaneled; there was no prejudice to defendant as a result. McGee v. State, 853 So. 2d 125, 2003 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 834 (Miss. Ct. App. 2003).

Trial court did not abuse its discretion under Miss. Code Ann.§ 13-5-21 in empanelling a jury to try defendant for aggravated driving while intoxicated where the jury panel consisted of jurors who resided in different judicial districts within the same county. Gates v. State, 829 So. 2d 1283, 2002 Miss. App. LEXIS 591 (Miss. Ct. App. 2002).

Defendant in a murder trial failed to show that a jury selection method of drawing juries from two judicial districts did not result in a fair cross-section of the community. Thomas v. State, 818 So. 2d 335, 2002 Miss. LEXIS 130 (Miss. 2002).

Trial court's decision to draw jury venire from both judicial districts, rather than just a jury venire from the district where the burglary victims were likely less well known, was not error as the record did not show that the jury selection process was fraudulent, unfair, or deprived defendant of due process. Cunningham v. State, 828 So. 2d 208, 2002 Miss. App. LEXIS 11 (Miss. Ct. App. 2002).

Fact that special venire in transferee county was drawn randomly from county as a whole, rather than alternately from each of county's two judicial districts as required by statute, did not amount to reversible error in murder prosecution, as defendant failed to demonstrate any prejudice resulting from noncompliance with statute and failed to demonstrate that jury was not chosen from fair cross-section of community. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Statutory method of selecting jurors in criminal prosecution is directory, not mandatory, and unless it is shown that method used was fraudulent or such radical departure from method prescribed by the statute as to be unfair to defendant or to prevent due process of law, appellate court will not reverse. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

A murder defendant did not establish that the trial judge abused his discretion by refusing the defendant's request to draw venire members from both of the county's judicial districts where the defendant did not offer evidence indicating that the jury selected was biased or partial. Davis v. State, 660 So. 2d 1228, 1995 Miss. LEXIS 287 (Miss. 1995), cert. denied, 517 U.S. 1192, 116 S. Ct. 1684, 134 L. Ed. 2d 785, 1996 U.S. LEXIS 3101 (U.S. 1996).

Under this section, trial court may require juror to serve out of his district (1) in its discretion and (2) when such juror is drawn on special venire; special venire may be drawn from both districts of county, in discretion of trial judge. Myers v. State, 353 So. 2d 1364, 1978 Miss. LEXIS 2068 (Miss. 1978).

In homicide prosecution, where court ordered special venire from first district of county, refusal to order one from second district held not error, statute being directory. Taylor v. State, 148 Miss. 621, 114 So. 390, 1927 Miss. LEXIS 48 (Miss. 1927).

This section [Code 1942, § 1770] is directory. Haney v. State, 129 Miss. 486, 92 So. 627, 1922 Miss. LEXIS 68 (Miss. 1922); Taylor v. State, 148 Miss. 621, 114 So. 390, 1927 Miss. LEXIS 48 (Miss. 1927).

In a county having two circuit court districts the venire may be drawn from both districts of the county, but where one jury box is exhausted it is not reversible error for the trial court to draw all names from the other district. Ferguson v. State, 107 Miss. 559, 65 So. 584, 1914 Miss. LEXIS 118 (Miss. 1914).

This section [Code 1942, § 1770] applies to Perry county notwithstanding the Act March 6, 1892 (Acts 1892 ch. 116) dividing it into two judicial districts and providing that no person shall be liable to jury service outside the district in which he lives. Burt v. State, 86 Miss. 280, 38 So. 233, 1905 Miss. LEXIS 17 (Miss. 1905).

2. Jury selection.

Where defendant failed to show that the

under-representation of a racial group on his jury was based on a systematic exclusion in selection of the jury venire, defendant was not denied a jury that was a fair cross-section of the community. Pratt v. State, 870 So. 2d 1241, 2004 Miss. App. LEXIS 273 (Miss. Ct. App. 2004).

§ 13-5-23. Exemptions; length of service of tales and grand jurors.

(1) All qualified persons shall be liable to serve as jurors, unless excused by the court for one (1) of the following causes:

(a) When the juror is ill and, on account of the illness, is incapable of performing jury service;

(b) When the juror's attendance would cause undue or extreme physical or financial hardship to the prospective juror or a person under his or her care or supervision; or

(c) When the potential juror is a breast-feeding mother.

(2) An excuse of illness under subsection (1)(a) of this section may be made to the clerk of court outside of open court by providing the clerk with a certificate of a licensed physician, stating that the juror is ill and is unfit for jury service, in which case the clerk may excuse the juror. If the excuse of illness is not supported by a physician's certificate, a judge of the court for which the individual was called to jury service shall decide whether to excuse an individual under subsection (1)(a) of this section.

(3)(a) The test of an excuse under subsection (1)(b) of this section for undue or extreme physical or financial hardship shall be whether the individual would either:

(i) Be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury; or

(ii) Incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support; or

(iii) Suffer physical hardship that would result in illness or disease.

(b) "Undue or extreme physical or financial hardship" does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment or business.

(c) A judge of the court for which the individual was called to jury service shall decide whether to excuse an individual under subsection (1)(b) of this section.

(d) A person asking to be excused based on a finding of undue or extreme physical or financial hardship must take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.

(e) A person asking a judge to grant an excuse under subsection (1)(b) of this section may be required to provide the judge with documentation such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation may result in a denial of the request to be excused.

(f) In cases under subsection (1)(c) of this section, the excuse must be made by the juror in open court under oath.

(4) A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature. A person who has been summoned for jury duty who meets the age threshold for exemption from jury service shall have the option to be permanently excused from jury service due to age by filing with the circuit clerk a notarized request to be permanently excused.

(5) Grand jurors shall serve until discharged by the court.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 10 (4); 1857, ch. 61, art. 127; 1871, § 735; 1880, § 1662; 1892, § 2356; 1906, § 2686; Hemingway's 1917, § 2178; 1930, § 2031; 1942, § 1764; Laws, 1938, ch. 302; Laws, 1944, ch. 197; Laws, 1976, ch. 464, § 1; Laws, 1988, ch. 438; Laws, 1990, ch. 360, § 1; Laws, 2004, 1st Ex Sess, ch. 1, § 8; Laws, 2006, ch. 437, § 1; Laws, 2006, ch. 520, § 10; Laws, 2007, ch. 433, § 1, eff from and after Jan. 1, 2008.

Joint Legislative Committee Note — Section 1 of ch. 437 Laws of 2006, effective from and after passage (approved March 20, 2006), amended this section. Section 10 of ch. 520, Laws of 2006, effective from and after passage (approved April 3, 2006), also amended this section. As set out above, this section reflects the language of Section 10 of ch. 520, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Exemption from jury duty as personal privilege, see § 13-5-25.

Exemption of officers and employees of the state penitentiary from jury duty, see § 47-5-55.

Selection and service of jurors, see Miss. R. Civ. P. 47.

JUDICIAL DECISIONS

1. In general.

Trial court did not abuse its discretion in denying a doctor's motion to quash the jury panel—when the doctor contended that the doctor was denied a fair trial in a medical malpractice action because the doctor, who was Caucasian, had an all-African-American venire in a county that was 25 percent Caucasian—because the appellate court found no evidence showing any actual fraud, prejudice, or such a flagrant violation of duty as to amount to fraud. Kronfol v. Johnson, — So. 3d —, 2019 Miss. App. LEXIS 183 (Miss. Ct. App. Apr. 30, 2019).

Although defendant argued that the trial court committed reversible error by excusing two potential jurors because they had served on a jury in the past two years, rather than permitting those jurors the discretion to decide whether or not to serve, procedural bar aside, the error was harmless because defendant did not claim any constitutional violation or that he was in any manner prejudiced by the dismissal of the potential jurors. Gause v. State, 65 So. 3d 295, 2011 Miss. LEXIS 314 (Miss. 2011), limited, Hall v. State, 127 So. 3d 202, 2013 Miss. LEXIS 649 (Miss. 2013).

A trial court's excusal of a potential

juror on hardship grounds was not an abuse of discretion where the juror had 4 children at home with no one to care for them. Nixon v. State, 533 So. 2d 1078, 1987 Miss. LEXIS 2917 (Miss. 1987), cert. denied, 490 U.S. 1102, 109 S. Ct. 2458, 104 L. Ed. 2d 1012, 1989 U.S. LEXIS 2745 (U.S. 1989), overruled, Wharton v. State, 734 So. 2d 985, 1998 Miss. LEXIS 576 (Miss. 1998).

Non-compliance with § 13-5-23, on exemption of jurors, does not warrant quashing of venire unless there is showing of actual fraud, prejudice, or such flagrant violation of duty as to amount to fraud. Pulliam v. State, 515 So. 2d 945, 1987 Miss. LEXIS 2895 (Miss. 1987).

The exemptions from jury duty set forth in this section [Code 1942, § 1764] are not unreasonable or discriminatory, and a defendant, indicted and tried for murder, was not thereby prejudiced in his right to a fair trial. Capler v. State, 237 So. 2d 445, 1970 Miss. LEXIS 1509 (Miss. 1970), vacated, 408 U.S. 937, 92 S. Ct. 2862, 33 L. Ed. 2d 754, 1972 U.S. LEXIS 1910 (U.S. 1972).

The trial court did not commit reversible error in overruling defendant's motion for a mistrial, or that a new panel of jurors be tendered to him, where, after ten jurors had been finally accepted to try the defendant for murder, the court, out of the presence of defendant or his counsel, excused a juror because illness required the juror's presence at home, but allowed the defendant one additional peremptory challenge. Upshaw v. State, 231 Miss. 158, 94 So. 2d 337, 1957 Miss. LEXIS 500 (Miss. 1957).

While it is obvious that there may be circumstances, making strict compliance with this section [Code 1942, § 1764] impossible as regards presenting excuses from jury service, the trial judge is under a duty to require compliance therewith except where it is impracticable to do so. Parker v. State, 201 Miss. 579, 29 So. 2d 910, 1947 Miss. LEXIS 423 (Miss. 1947).

As regards the matter of presenting excuses from jury service, the rule is that it is not enough to warrant the court in quashing the venire that the trial judge has violated or failed to do his duty in this regard, but, to so warrant, the evidence and circumstances must show actual fraud or such flagrant violation of duty in this respect as that the proven facts and circumstances show a legal fraud on the rights of the defendant. Parker v. State, 201 Miss. 579, 29 So. 2d 910, 1947 Miss. LEXIS 423 (Miss. 1947).

In the absence of a showing of fraud on the rights of the accused in a criminal case, it was not reversible error for the trial court to excuse from jury service, for good cause, before the case was called for trial and in chambers without notice to the accused, 26 of the 74 persons who appeared in response to an order for a special venire of 90 persons. Parker v. State, 201 Miss. 579, 29 So. 2d 910, 1947 Miss. LEXIS 423 (Miss. 1947).

Indictment for murder held not void because grand juror allegedly served as both election commissioner and grand juror. Robinson v. State, 178 Miss. 568, 173 So. 451, 1937 Miss. LEXIS 228 (Miss. 1937).

OPINIONS OF THE ATTORNEY GENERAL

Since no state or federal statute requires private employer to pay wages or salary to employee serving on grand or petit jury, and who is therefore not working in employer's business during this time, simple refusal of employer to pay employee under these circumstances would not constitute violation of Miss. Code Section 13-5-23. Pacific, Apr. 7, 1993, A.G. Op. #93-0112.

RESEARCH REFERENCES

ALR.

Power of grand jury after term of court for which organized. 75 A.L.R.2d 544.

Religious belief as ground for exemption or excuse from jury service. 2 A.L.R.3d 1392.

Excusing, on account of public, charitable, or educational employment, one qualified and not specifically exempted as juror in state criminal case, as ground of complaint by accused. 99 A.L.R.3d 1261.

Impeachment of verdict by juror's evidence that he was coerced or intimidated by fellow juror. 39 A.L.R.4th 800.

Jury: who is lawyer or attorney disqualified or exempt from service, or subject to challenge for cause. 57 A.L.R.4th 1260.

Am. Jur.

38 Am. Jur. 2d (Rev), Grand Jury §§ 9, 12.

47 Am. Jur. 2d (Rev), Jury §§ 143.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Form 131 (order excusing juror).

CJS.

38A C.J.S., Grand Juries § 37.

50 C.J.S., Juries §§ 285, 286, 302-305.

§ 13-5-25. Who is exempt as a personal privilege.

Every citizen over sixty-five (65) years of age, and everyone who has served as a grand juror or as a petit juror in the trial of a litigated case within two (2) years, shall be exempt from service if the juror claims the privilege. No qualified juror shall be excluded because of any such reasons, but the same shall be a personal privilege to be claimed by any person selected for jury duty. Any citizen over sixty-five (65) years of age may claim this personal privilege outside of open court by providing the clerk of court with information that allows the clerk to determine the validity of the claim.

Provided, however, that no person who has served as a grand juror or as a petit juror in a trial of a litigated case in one (1) court may claim the exemption in any other court where the juror may be called to serve.

HISTORY: Codes, 1880, §§ 1661, 1683; 1892, § 2357; 1906, § 2687; Hemingway's 1917, § 2179; 1930, § 2032; 1942, § 1765; Laws, 1958, ch. 287; Laws, 1960, ch. 236; Laws, 1966, ch. 353, § 1; Laws, 1976, ch. 464, § 2; Laws, 1990, ch. 360, § 2, eff from and and after July 1, 1990; Laws, 2004, 1st Ex Sess, ch. 1, § 9; Laws, 2006, ch. 437, § 2; Laws, 2007, ch. 433, § 2, eff from and after Jan. 1, 2008.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Harmless error.
3. Illustrative cases.

1. In general.

The exemptions under Miss. Code Ann. § 13-5-25 are not mandatory and must be asserted by the individual. Trevillion v. State, 26 So. 3d 1098, 2009 Miss. App. LEXIS 828 (Miss. Ct. App. 2009).

Although a trial court erred in removing a potential juror, defendant failed to object at trial; therefore, he was procedurally barred from arguing the error at trial. Moreover, the error was harmless. Spires v. State., 10 So. 3d 477, 2009 Miss. LEXIS 260 (Miss. 2009).

The exemption contemplated by this section does not apply to service within a designated venire period. Galloway v. State, 735 So. 2d 1117, 1999 Miss. App. LEXIS 158 (Miss. Ct. App. 1999).

Transfer of venue to another county for trial proceedings did not deprive defendant in murder prosecution of his right to be tried by jury chosen from fair cross-section of community including senior citizens, despite defendant's contention that moving jurors to the other county made elderly persons more inclined to exercise their statutory exemption from jury service; defendant failed to present any evidence indicating that jury lists were not representative of community. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Mississippi's exemption of jurors who are illiterate or under 21 years of age, pursuant to § 13-5-1, or over 65 years of age, pursuant to § 13-5-25, did not violate the defendant's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Turner v. State, 573 So. 2d 657, 1990 Miss. LEXIS 792 (Miss. 1990), cert. denied, 500 U.S. 910, 111 S. Ct. 1695, 114 L. Ed. 2d 89, 1991 U.S. LEXIS 2522 (U.S. 1991).

Although persons over 65 years of age and persons who have served on a jury within 2 years are exempt from jury service under § 13-5-25, neither the circuit court nor the deputy circuit clerk have authority to act unilaterally and strike such persons from the jury list. Such persons are eligible for jury service and have every lawful right and authority to serve if called and selected. When their names are drawn, such persons must be summoned the same as other prospective jurors and no one has authority to exempt any such juror from service unless he or she claims the privilege and asks to be excused. Thus, a judgment of conviction and sentence was reversed where the deputy circuit clerk unilaterally struck from the jury list all persons over 65 years of age and all persons who had served on a jury within the 2 preceding years. Adams v. State, 537 So. 2d 891, 1989 Miss. LEXIS 28 (Miss. 1989).

It was not error to excuse veniremen who had served as petit jurors a few weeks prior to the trial. Brown v. State, 38 So. 316 (Miss. 1905).

2. Harmless error.

Although defendant argued that the trial court committed reversible error by excusing two potential jurors because they had served on a jury in the past two years, rather than permitting those jurors the discretion to decide whether or not to serve, procedural bar aside, the error was harmless because defendant did not claim any constitutional violation or that he was in any manner prejudiced by the dismissal of the potential jurors. Gause v. State, 65 So. 3d 295, 2011 Miss. LEXIS 314 (Miss. 2011), limited, Hall v. State, 127 So. 3d 202, 2013 Miss. LEXIS 649 (Miss. 2013).

Although the trial court erred by informing two potential jurors that he was required to dismiss them because they had previously served on a jury in the last two years, the error was harmless, and defendant had not preserved his challenge for appellate review since there had not been a contemporaneous objection to the error. Trevillion v. State, 26 So. 3d 1098, 2009 Miss. App. LEXIS 828 (Miss. Ct. App. 2009).

3. Illustrative cases.

Errors relating to the jury selection process were forfeited on appeal due to a failure to object contemporaneously below; at any rate, the outcome would have been the same because, while the trial court erred in appointing a foreperson, the trial court either did not commit error or cured other errors. Personal privilege exemptions had to be asserted by the individual, jurors who sat on a jury in the last 2 years could have been required to serve due to a lack of potential jurors, an error relating to a failure to complete the jury questionnaire was corrected during direct questioning at voir dire, and a juror's answer to a question about prior convictions fulfilled the statutory requirements. Hall v. State, — So. 3d —, 2016 Miss. LEXIS 125 (Miss. Mar. 17, 2016).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d (Rev), Grand Jury §§ 9, 12.

47 Am. Jur. 2d (Rev, Jury §§ 143-146.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Form 131 (order excusing juror).

CJS.

38A C.J.S., Grand Juries § 37.

50 C.J.S., Juries §§ 285, 286, 302-305.

Law Reviews.

1989 Mississippi Supreme Court Review: Challenge to Jury. 59 Miss. L. J. 868, Winter, 1989.

§ 13-5-26. Jury box; deposit of names drawn from jury wheel; drawing and assignment of jurors; use of computer or electronic device for random selection.

(1) The circuit clerk shall maintain a jury box and shall place therein the names or identifying numbers of all prospective jurors drawn from the jury wheel.

(2) A judge or any court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the circuit clerk to draw and assign to that court or official the number of jurors he deems necessary for one or more jury panels or as required by law for a grand jury, except as otherwise provided by subsection (3) of this section. Upon receipt of the direction, and in a manner prescribed by the court, the circuit clerk shall publicly draw at random from the jury box the number or jurors specified.

(3) The court may order that the drawing and assigning of jurors pursuant to subsection (2) of this section may be performed by random selection of a computer or electronic device pursuant to such rules and regulations as may be prescribed by the court. The jurors drawn for jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the court.

HISTORY: Laws, 1974, ch. 378, § 6(1, 2); Laws, 1986, ch. 312, § 2, eff from and after July 1, 1986.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. No deficiency in jury selection.

1. In general.

Trial judge's questioning of circuit clerk established that clerk had complied, or substantially complied, with statute with respect to random selection of jurors to try defendant charged with attempting to obtain controlled substance by misrepresentation or fraud. Griffin v. State, 494 So. 2d 376, 1986 Miss. LEXIS 2651 (Miss. 1986).

2. No deficiency in jury selection.

Trial court properly denied defendant's motion to quash a venire because defendant did not show that the exclusion of persons with surnames beginning with "T-Z," which was due to an algorithm used by the county's computer system, disproportionally affected any distinctive group in the county; defendant alleged no prejudice resulting from the trial court's noncompliance with the statute, and failed to show that persons whose surnames began with "A" through "S" did not represent a fair cross-section of the community. Presley v. State, 9 So. 3d 442, 2009 Miss. App. LEXIS 213 (Miss. Ct. App. 2009).

Under Miss. Code Ann. § 13-5-26, the circuit court did not violate method of drawing and summoning jury where defendant did not allege that any deficiency in jury selection resulted in prejudice to his case or that the nine jurors were not qualified to serve. Havard v. State, 986 So.

2d 333, 2007 Miss. App. LEXIS 756 (Miss. Ct. App. 2007), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 557 (Miss. 2008).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Grand Jury §§ 8, 13, 19, 21.

47 Am. Jur. 2d Jury §§ 104, 105, 108, 120, 132, 133, 148, 199.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Forms 91-112 (selection, drawing, and summoning of jurors).

CJS.

38A C.J.S., Grand Juries §§ 7, 8, 39–42, 44, 45.

50 C.J.S., Juries §§ 308, 309, 311-313, 324, 328, 329, 333, 335, 336.

§ 13-5-27. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, effective from and after Jan. 1, 1975.

[Codes, 1892, § 2365; 1906, § 2694; Hemingway's 1917, § 2186; 1930, § 2039; 1942, § 1772; Laws, 1938, ch. 298; 1938, Ex. ch. 84; 1960, ch. 237; Am Laws, 1972, ch. 372, § 1]

Editor's Notes — Former § 13-5-27 provided for the drawing of grand and petit jurors in open court.

§ 13-5-28. Summoning of person drawn for jury duty.

If a grand, petit or other jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be served with a summons, either personally or by mail, addressed to the juror at the juror's usual residence, business or post office address, requiring the juror to report for jury service at a specified time and place. The summons shall include instructions to the potential jurors that explain, in layman's terms, the provisions of Section 13-5-23.

HISTORY: Laws, 1974, ch. 378, § 6(3); Laws, 2004, 1st Ex Sess, ch. 1, § 10; Laws, 2006, ch. 437, § 3; Laws, 2007, ch. 433, § 3, eff from and after Jan. 1, 2008.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

OPINIONS OF THE ATTORNEY GENERAL

When a jury is needed in justice court, the justice court clerk must notify the circuit clerk of the number of jurors to be summoned and the circuit clerk must draw the jury pool and issue summonses to those jurors. Section 13-5-28 allows the circuit clerk to serve the summonses either personally or by mail. Wilson, November 15, 1996, A.G. Op. #96-0792.

§ 13-5-29. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, eff from and after Jan. 1, 1975.

[Codes, 1892, § 2366; 1906, § 2695; Hemingway's 1917, § 2187; 1930, § 2040; 1942, § 1773]

Editor's Notes — Former § 13-5-29 provided for the envelopes containing slips with jurors' names to be opened and venire facias to be issued.

§ 13-5-30. Summoning of jurors where there is shortage of petit jurors drawn from jury box.

If there is an unanticipated shortage of available petit jurors drawn from a jury box, the court may require the sheriff to summon a sufficient number of petit jurors selected at random by the clerk from the jury box in a manner prescribed by the court.

HISTORY: Laws, 1974, ch. 378, § 6(4), eff from and after Jan. 1, 1975.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Grand Jury § 22.

47 Am. Jur. 2d, Jury §§ 108, 120.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Forms 91-112 (selection, drawing, and summoning of jurors).

CJS.

38A C.J.S., Grand Juries §§ 48-51.

50 C.J.S., Juries §§ 317-319, 326, 331.

§ 13-5-31. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, eff from and after Jan. 1, 1975.

[Codes, Hutchinson's 1848, ch. 61, art. 8 (3); 1857, ch. 61, art. 138; 1871, § 739; 1880, § 1687; 1892, § 2367; 1906, § 2696; Hemingway's 1917, § 2188; 1930, § 2041; 1942, § 1774]

Editor's Notes — Former § 13-5-31 pertained to the drawing of jurors in vacation term.

§ 13-5-32. Names of jurors drawn from jury box to be made public; exception.

The names of jurors drawn from the jury box shall be made available to the public unless the court determines in any instance that this information in the interest of justice should be kept confidential or its use limited in whole or in part.

HISTORY: Laws, 1974, ch. 378, § 6(5), eff from and after Jan. 1, 1975.

JUDICIAL DECISIONS

1. In general.

Trial court did not improperly sequester the names of the jurors in defendant's trial for tax evasion. The judge decided in the case at bar to keep the jurors' names secret based on events from defendant's previous prosecution; moreover, defendant failed to properly brief this issue. King v. State, 897 So. 2d 981, 2004 Miss. App. LEXIS 689 (Miss. Ct. App. 2004), cert. denied, 896 So. 2d 373, 2005 Miss. LEXIS 224 (Miss. 2005).

Because defendant adopted son failed to show that sealing of the venire panel list pursuant to Miss. Code Ann. § 13-5-32 without notice or opportunity for a hearing prejudiced him in any way, the error was not a basis for reversal. King v. State, 857 So. 2d 702, 2003 Miss. LEXIS 450 (Miss. 2003).

Before a trial judge makes a determination not to make a jury list available to litigants or trial attorneys whose clients will have a cause for trial, he should cause the record clearly to demonstrate good and sufficient reason "in the interest of justice" as the section provides. Before making his determination to keep confidential or secret the names of the jurors drawn from the jury box, the litigants or counsel should have notice that such action is being considered by the trial judge; then the court should make its decision only after a hearing is accorded the defendant on the issue. Valentine v. State, 396 So. 2d 15, 1981 Miss. LEXIS 1977 (Miss. 1981).

RESEARCH REFERENCES

CJS.

50 C.J.S., Juries §§ 307, 308, 315.

§ 13-5-33. Juror may postpone jury service one time only; conditions for postponement; extreme emergency exception.

(1) Notwithstanding any other provisions of this chapter, individuals scheduled to appear for jury service have the right to postpone the date of their initial appearance for jury service one (1) time only. Postponements shall be granted upon request, provided that:

(a) The juror has not been granted a postponement within the past two (2) years;

(b) The prospective juror appears in person or contacts the clerk of the court by telephone, electronic mail or in writing to request a postponement; and

(c) Prior to the grant of a postponement with the concurrence of the clerk of the court, the prospective juror fixes a date certain to appear for jury service that is not more than six (6) months or two (2) terms of court after the date on which the prospective juror originally was called to serve and on which date the court will be in session, whichever is the longer period.

(2) A subsequent request to postpone jury service may be approved by a judicial officer only in the event of an extreme emergency, such as a death in the family, sudden illness, or a natural disaster or a national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the individual will appear for jury service within six (6) months or two (2) terms of court after the postponement on a date when the court will be in session.

(3) The Administrative Office of Courts shall promulgate rules for the implementation of this section.

HISTORY: Laws, 2004, 1st Ex Sess, ch. 1, § 14; Laws, 2006, ch. 437, § 4, eff from and after passage (approved Mar. 20, 2006).

Editor's Notes — A former § 13-5-33 [Codes, 1892, § 2368; 1906, § 2697; Hemingway's 1917, § 2190; 1930, § 2043; 1942, § 1776; Repealed by Laws, 1974, ch. 378, § 11, eff from and after Jan. 1, 1975] provided for the coroner or justice of the peace to perform the duties of the chancery clerk in relation to juries when the same person holds both clerks' offices, and for the performance of such duties in case of absence or illness of a clerk or sheriff.

Laws of 2004, 1st Ex Sess, ch. 1, § 20 provides:

"SECTION 20. Sections 8 through 15 of this act shall take effect and be in force from and after January 1, 2007." Laws of 2006, ch. 437, § 4, extended the effective date of this section until January 1, 2008."

§ 13-5-34. Punishment for failure to appear or to complete jury service.

(1) A person summoned for jury service who fails to appear or to complete jury service as directed, and who has failed to obtain a postponement in compliance with the provisions for requesting a postponement, or who fails to appear on the date set pursuant to Section 13-5-33, may be ordered by the court to appear and show cause for failure to comply with the summons. If the juror fails to show good cause for noncompliance with the summons, the juror may be held in civil contempt of court and may be fined not more than Five Hundred Dollars ($500.00) or imprisoned not more than three (3) days, or both. The prospective juror may be excused from paying sanctions for good cause shown or in the interest of justice.

(2) In addition to, or in lieu of, the fine or imprisonment provided in subsection (1) of this section, the court may order that the prospective juror complete a period of community service for a period no less than if the prospective juror would have completed jury service, and provide proof of completion of this community service to the court.

HISTORY: Laws, 1974, ch. 378, § 6(6); Laws, 2004, 1st Ex Sess, ch. 1, § 11; Laws, 2006, ch. 437, § 5; Laws, 2007, ch. 433, § 4, eff from and after Jan. 1, 2008.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Jury §§ 93- 99.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Form 122 (order for defaulting juror to show cause).

CJS.

50 C.J.S., Juries §§ 345, 346.

§ 13-5-35. Employment protections for jurors.

(1) It shall be unlawful for any employer or any other person to persuade or attempt to persuade any juror to avoid jury service; to intimidate or to threaten any juror in that respect; or to remove or otherwise subject an employee to adverse employment action as a result of jury service if the employee notifies his or her employer that he or she has been summoned to serve as a juror within a reasonable period of time after receipt of a summons.

(2) It shall be unlawful for an employer to require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or time spent actually serving on a jury. Nothing in this provision shall be construed to require an employer to provide annual, vacation or sick leave to employees under the provisions of this statute who otherwise are not entitled to such benefits under company policies.

(3) Any violation of subsection (1) or (2) of this section shall be deemed an interference with the administration of justice and a contempt of court and punishable as such.

(4) A court shall automatically postpone and reschedule the service of a summoned juror employed by an employer with five (5) or fewer full-time employees, or their equivalent, if another employee of that employer has previously been summoned to appear during the same period. Such postponement will not constitute the excused individual's right to one (1) automatic postponement under Section 13-5-33.

HISTORY: Laws, 2004, 1st Ex Sess, ch. 1, § 15; Laws, 2006, ch. 437, § 6, eff from and after passage (approved Mar. 20, 2006).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference by substituting "Section 13-5-33" for "Section 13-5-24" at the end of subsection (4). The Joint Committee ratified the correction at its August 12, 2019, meeting.

§ 13-5-36. Preservation of records and papers in connection with selection and service of jurors.

All records and papers compiled and maintained by the jury commission or the clerk in connection with selection and service of jurors shall be preserved by the clerk for four (4) years after the jury wheel used in their selection is emptied and refilled, and for any longer period ordered by the court.

HISTORY: Laws, 1974, ch. 368 § 7, eff from and after Jan. 1, 1975.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

§ 13-5-37. Repealed.

Repealed by Laws of 1974, ch. 378, § 11, eff from and after Jan. 1, 1975.

[Codes, 1892, § 2370; 1906, § 2699; Hemingway's 1917, § 2192; 1930, § 2045; 1942, § 1778]

Editor's Notes — Former § 13-5-37 provided for a fine and contempt of court for officials who failed to perform specified duties pertaining to juries.

§ 13-5-38. Payment of cost of implementation of law.

In counties where the implementation of Sections 13-5-2 through 13-5-16, 13-5-21, 13-5-26 through 13-5-38, and 13-5-41, requires additional clerical or other personnel, the board of supervisors, in its discretion, may pay for such services out of the general county fund of the respective county.

HISTORY: Laws, 1974, ch. 378, § 10, eff from and after Jan. 1, 1975.

Editor's Notes — Sections 13-5-27, 13-5-29, 13-5-31 and 13-5-37 referred to in the paragraph were repealed by Laws, 1974, ch. 378, § 11, effective from and after Jan. 1, 1975.

Cross References — Selection and service of jurors, see Miss. R. Civ. P. 47.

§ 13-5-39. Terms of grand juries limited.

Unless otherwise directed by an order of the senior circuit judge, not more than two (2) grand juries shall be drawn or impaneled during a calendar year at or for a term or terms of the circuit court in any county or judicial district of a county; provided, however, upon impanelment, a grand jury may be convened and reconvened in termtime and in vacation. It shall continue to serve from term to term until the next grand jury is impaneled, and it may return indictments to any term of court, notwithstanding that a term of court at which criminal business may be conducted shall intervene between the time the grand jury is impaneled and the time an indictment is returned.

HISTORY: Codes, Hemingway's 1917, § 2189; 1930, § 2042; 1942, § 1775; Laws, 1910, ch. 107; Laws, 1983, ch. 499, § 1; Laws, 1984, ch. 351, eff from and after July 1, 1984.

JUDICIAL DECISIONS

1. In general.

Post-conviction relief was denied in a case where defendant entered a guilty plea to the crime of the sale of cocaine because an indictment was not void due to the fact that it was returned during a July term, but filed during a November term, since this was not prohibited under Miss. Code Ann. § 13-5-39; the grand jury continued to serve from term to term until the next grand jury was impaneled, and it was allowed to return indictments at any term of court. Belton v. State, 968 So. 2d 501, 2007 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 643 (Miss. 2007).

An indictment returned by grand jury impaneled in April and reconvened in September after an intervening term of court in July was not void since the statute fixing court terms in the county, § 9-7-49, specifically provided that a grand jury should be impaneled at the April and October terms but left the question of impaneling for the January and July terms discretionary with the judge. J. B.

Womack Constr. Co. v. Laws Constr. Co., 330 So. 2d 602, 1976 Miss. LEXIS 1867 (Miss. 1976).

RESEARCH REFERENCES

ALR.

Power of grand jury after term of court for which organized. 75 A.L.R.2d 544.

Am. Jur.

38 Am. Jur. 2d, Grand Jury § 15.

CJS.

38A C.J.S., Grand Juries §§ 88–91.

§ 13-5-41. Number of grand jurors.

The number of grand jurors shall not be less than fifteen (15) nor more than twenty-five (25), in the discretion of the court.

HISTORY: Codes, 1892, § 2371; 1906, § 2700; Hemingway's 1917, § 2193; 1930, § 2046; 1942, § 1779; Laws, 1896, ch. 84; Laws, 1974, ch. 378, § 9; Laws, 2013, ch. 476, § 1, eff from and after July 1, 2013.

JUDICIAL DECISIONS

1. In general.

Even if the appellate court assumed the person that sat on the grand jury was the same person that sat on the petit jury, it was unable to determine whether that person took part in the grand jury deliberations incident to the indictment against defendant. Havard v. State, 986 So. 2d 333, 2007 Miss. App. LEXIS 756 (Miss. Ct. App. 2007), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 557 (Miss. 2008).

Where ground of motion to quash indictment in murder prosecution "for defects and irregularities in the drawing, summoning, impaneling and organization of the grand jury" was too broad, the supreme court would assume, to the advantage of defendant, that the basis was made particular by the introduction of testimony purporting to relate to the method of summoning and impaneling the grand jury. Gipson v. State, 203 Miss. 434, 35 So. 2d 327, 1948 Miss. LEXIS 289 (Miss. 1948).

The trial judge cannot lawfully draw out and select only such names from the box as he desires in the formation of a grand jury and on proper objection to such grand jury an indictment found by them will be quashed. Sheppard v. State, 89 Miss. 147, 42 So. 544, 1906 Miss. LEXIS 54 (Miss. 1906).

Where a grand jury of sixteen men was determined on by the court and after the impaneling of such a jury two of them were excused, the court was authorized to cause the number of jurymen to be increased to any number not exceeding twenty. Posey v. State, 86 Miss. 141, 38 So. 324, 1905 Miss. LEXIS 35 (Miss. 1905).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Grand Jury § 17.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Forms 91-112 (selecting, drawing, and summoning of jurors).

CJS.

38A C.J.S., Grand Juries §§ 55, 61–64.

§ 13-5-43. Impaneling as conclusive evidence of competency and qualifications.

Before swearing any grand juror as such, he shall be examined by the court, on oath, touching his qualification. After the grand jurors shall have been sworn and impaneled, no objection shall be raised, by plea or otherwise, to the grand jury, but the impaneling of the grand jury shall be conclusive evidence of its competency and qualifications. However, any party interested may challenge or except to the array for fraud.

HISTORY: Codes, 1857, ch. 61, art. 131; 1871, § 729; 1880, § 1667; 1892, § 2375; 1906, § 2704; Hemingway's 1917, § 2197; 1930, § 2050; 1942, § 1784.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Swearing the jurors.
3. Time for objections.
4. Irregularities cured by statute.
5. Irregularities not cured by statute.
6. Challenge or exception to array.
7. Validity of indictments.
8. Impeachment of indictment by juror.

1. In general.

Supreme Court must indulge presumption that grand jury is composed of persons who have reasonable degree of intelligence and would perform their duties in accordance with law and evidence before them. State v. Pacific (Ex parte Jones County Grand Jury, First Judicial Dist.), 705 So. 2d 1308, 1997 Miss. LEXIS 747 (Miss. 1997).

Petitioner's allegation in an application for writ of habeas corpus that his conviction constituted a deprivation of his liberty without due process of law in violation of the Fourteenth Amendment of the United States Constitution because of the systematic exclusion of members of his race from the lists from which grand and petit juries were selected in the county where he was indicted and convicted, and because of his ignorance and circumstances of his arrest and incarceration, and as a consequence of the law of Mississippi he was not able to challenge the competency of the grand jury, together with a showing of the speed in which the petitioner was tried following his indictment, were sufficient to entitle the petitioner to a hearing on the question of whether he had adequately safeguarded his constitutional rights during his trial for murder. United States ex rel. Goldsby v. Harpole, 249 F.2d 417, 1957 U.S. App. LEXIS 4002 (5th Cir. Miss. 1957).

Grand jury which returned indictment is not shown to be illegal on hearing on motion for new trial after conviction of felonious assault by cutting with knife when circuit clerk merely stated that all jurors were white men, and it was neither shown nor intimated that there were no names of Negroes in jury box out of which grand and petit jury were drawn, but it did appear that jury boxes were practically exhausted after these juries had been drawn, it being common knowledge that number of Negroes who register and qualify for jury service are almost nominal in comparison with number of white persons who do so. Ferrell v. State, 208 Miss. 539, 45 So. 2d 127, 1950 Miss. LEXIS 272 (Miss. 1950).

It is duty of circuit and chancery clerks, board of supervisors and sheriff to comply strictly with all of requirements of statutes in manner of listing, drawing and selecting jurors, compiling jury lists, and summoning and impaneling juries, but since statutes on the subject are merely directory, judgment will not be reversed where there was no radical departure from statutory scheme of selecting and impaneling jury and jury selected was fair and impartial. Lott v. State, 204 Miss. 610, 37 So. 2d 782, 1948 Miss. LEXIS 394 (Miss. 1948).

On motion to quash jury list from which grand and petit juries were to be chosen, for alleged reason that board of supervisors had not selected names of jurors in manner required by law governing selection of qualified electors, placing names in jury box, and subsequent drawing of juries, it is competent to show by testimony of chancery and circuit clerks manner in which statutory requirements were complied with. Lott v. State, 204 Miss. 610, 37 So. 2d 782, 1948 Miss. LEXIS 394 (Miss. 1948).

The strict language of this section [Code 1942, § 1784], that the impaneling of the grand jury shall be conclusive evidence of its competence and qualification, permits of no exception. Reynolds v. State, 199 Miss. 409, 24 So. 2d 781, 1946 Miss. LEXIS 211 (Miss. 1946).

Unless the contrary appear from the record, the presumption is that the grand jury was legally organized. Chase v. State, 46 Miss. 683, 1872 Miss. LEXIS 39 (Miss. 1872).

This statute completely cuts off the plea in abatement challenging the fitness and qualifications of the grand jury or of any of its members. Head v. State, 44 Miss. 731, 1871 Miss. LEXIS 34 (Miss. 1871), overruled, Smith v. State, 58 Miss. 867, 1881 Miss. LEXIS 55 (Miss. 1881), overruled, Flowers v. State, 473 So. 2d 164, 1985 Miss. LEXIS 2140 (Miss. 1985); Durrah v. State, 44 Miss. 789, 1871 Miss. LEXIS 38 (Miss. 1871).

2. Swearing the jurors.

A defendant may, in the discretion of the court, after a plea of not guilty, move to quash the indictment on the ground that the record failed to show that the grand jury was sworn. Hardy v. State, 96 Miss. 844, 51 So. 460, 1910 Miss. LEXIS 176 (Miss. 1910).

A motion in an arrest of judgment should be overruled where based on objection that grand jury was not sworn in the absence of a record to the contrary. Hays v. State, 96 Miss. 153, 50 So. 557, 1909 Miss. LEXIS 30 (Miss. 1909).

3. Time for objections.

Defendant argued, on appeal, that his indictment on two counts of aggravated assault and possession of a firearm by a felon should have been dismissed because the alleged victim's brother-in-law sat on the grand jury that indicted defendant; however, defendant failed to submit this issue to the trial court, either in a motion to dismiss, or in defendant's motion for J.N.O.V. Townsend v. State, 939 So. 2d 796, 2006 Miss. LEXIS 552 (Miss. 2006).

Where the accused had been in jail during the session of the grand jury throughout the previous week, the court-appointed defense counsel resided in the county seat of the county where the rape indictment was returned, and it was not claimed that no opportunity was afforded to the defense for the making of a motion to quash the indictment at the time required by this section [Code 1942, § 1784], a later motion to quash indictment was properly overruled. Cameron v. State, 233 Miss. 404, 102 So. 2d 355, 1958 Miss. LEXIS 397 (Miss. 1958).

It is matter of state procedure as to when objections to indictment shall be raised to avoid expense and delay where no right of accused under federal Constitution is involved. Flowers v. State, 209 Miss. 86, 41 So. 2d 352, 1949 Miss. LEXIS 473 (Miss. 1949), cert. denied, 339 U.S. 946, 70 S. Ct. 800, 94 L. Ed. 1360, 1950 U.S. LEXIS 2045 (U.S. 1950).

Manner in which lists of jurors are selected by board of supervisors and placed in jury box involves solely question of state procedure and trial court is not in error in overruling motion to quash indictment on that ground when objections to qualification of grand jurors is not made before they are impaneled and defendant was at time represented by able lawyer and had reason to believe his case would be investigated by grand jury and he could have obtained information as to venire from which grand jury would be drawn. Flowers v. State, 209 Miss. 86, 41 So. 2d 352, 1949 Miss. LEXIS 473 (Miss. 1949), cert. denied, 339 U.S. 946, 70 S. Ct. 800, 94 L. Ed. 1360, 1950 U.S. LEXIS 2045 (U.S. 1950).

This section [Code 1942, § 1784], requires that objections to qualifications of grand jurors be made, if at all, before they are impaneled, unless accused has been denied opportunity for doing so, and objec-

tion cannot be raised afterward. Flowers v. State, 209 Miss. 86, 41 So. 2d 352, 1949 Miss. LEXIS 473 (Miss. 1949), cert. denied, 339 U.S. 946, 70 S. Ct. 800, 94 L. Ed. 1360, 1950 U.S. LEXIS 2045 (U.S. 1950); Cameron v. State, 233 Miss. 404, 102 So. 2d 355, 1958 Miss. LEXIS 397 (Miss. 1958); Gordon v. State, 160 So. 2d 73 (Miss. 1964).

Motion to quash jury list from which grand jury was chosen, made by defendant after indictment by grand jury, but before arraignment, is made too late as strict language of this section [Code 1942, § 1784] that impaneling of grand jury shall be conclusive evidence of its competence and qualifications admits of no exceptions. Lott v. State, 204 Miss. 610, 37 So. 2d 782, 1948 Miss. LEXIS 394 (Miss. 1948).

It is too late to make a motion to quash an indictment where objection to the illegal organization of a grand jury had not been made before it was impaneled. State v. Forbes, 134 Miss. 425, 98 So. 844, 1924 Miss. LEXIS 267 (Miss. 1924).

In a motion to quash an indictment on a right claimed under the United States Constitution, the state court is bound by decisions of the United States court and the objection may be taken by plea in abatement or motion to quash before a plea of not guilty is entered. Hill v. State, 89 Miss. 23, 42 So. 380, 1906 Miss. LEXIS 42 (Miss. 1906).

Under this section [Code 1942, § 1784] challenges to grand jurors for disqualifications must be submitted before the grand jury is impaneled, regardless of whether the disqualification arises from bias or personal incompetency. Cain v. State, 86 Miss. 505, 38 So. 227, 1905 Miss. LEXIS 14 (Miss. 1905).

The statute applies to the case of a defendant who was not advised that his case was to come before the grand jury for investigation and precludes him from raising any question as to the competency of any one or more grand jurors by motion to quash the indictment. Cain v. State, 86 Miss. 505, 38 So. 227, 1905 Miss. LEXIS 14 (Miss. 1905).

This section [Code 1942, § 1784] requires that objections to the qualifications of grand jurors must be made, if at all, before they are impaneled, and they cannot be raised afterward. Dixon v. State, 74 Miss. 271, 20 So. 839, 1896 Miss. LEXIS 110 (Miss. 1896).

4. Irregularities cured by statute.

After the impaneling of a grand jury, certain members having been excused, the court directed that certain bystanders serve as grand jurors, though such persons were not among those listed by the supervisors for jury service, and though their names were not on the venire drawn for service during that term, defendant made no direct challenge and took no exception at the time. In the absence of any showing that the grand jury was not fair and impartial, there was no ground for reversal of a conviction on an indictment found by it. Posey v. State, 86 Miss. 141, 38 So. 324, 1905 Miss. LEXIS 35 (Miss. 1905).

In the absence of evidence that a grand jury was unfair and of an objection at the time, the court may select grand jurors from bystanders. Posey v. State, 86 Miss. 141, 38 So. 324, 1905 Miss. LEXIS 35 (Miss. 1905).

5. Irregularities not cured by statute.

The trial judge should not select a jury from slips with jurors' names thereon turned up where he ignores the names of those he does not wish to serve and exceptions to his actions should be sustained and his error is not cured by the statute. Sheppard v. State, 89 Miss. 147, 42 So. 544, 1906 Miss. LEXIS 54 (Miss. 1906).

6. Challenge or exception to array.

Even though grand jury was improperly selected, once it had been impaneled defendant could not thereafter challenge its competency or qualifications except as to a challenge to the array for fraud, and consequently where there was no such challenge, motion to quash indictment after jury had been impaneled was properly overruled. Reynolds v. State, 199 Miss. 409, 24 So. 2d 781, 1946 Miss. LEXIS 211 (Miss. 1946).

An objection to the grand jury as a body, on the ground that the sheriff, whom defendant was charged with assaulting, assisted in the drawing of the jury, could not be made by motion to quash indictment but only by a challenge to the array for fraud. Long v. State, 133 Miss. 33, 96 So. 740, 1923 Miss. LEXIS 108 (Miss. 1923).

7. Validity of indictments.

An indictment charging the defendant with the crimes of perjury and conspiracy to commit perjury would not be quashed based upon the fact that the same grand jurors who heard the defendant testify, and were therefore witnesses to his alleged perjury, were the same grand jurors who returned the indictment against him, even though it would have been the better practice not to have sought the perjury and conspiracy indictments from the same grand jury who heard the alleged perjury, where there was no evidence of any fraud or wrongdoing on the part of the grand jurors. Smallwood v. State, 584 So. 2d 733, 1991 Miss. LEXIS 405 (Miss. 1991).

Where the accused had been in jail during the session of the grand jury throughout the previous week, the court-appointed defense counsel resided in the county seat of the county where the rape indictment was returned, and it was not claimed that no opportunity was afforded to the defense for the making of a motion to quash the indictment at the time required by this section [Code 1942, § 1784], a later motion to quash indictment was properly overruled. Cameron v. State, 233 Miss. 404, 102 So. 2d 355, 1958 Miss. LEXIS 397 (Miss. 1958).

Indictment for murder held not void because grand juror allegedly serves as both election commissioner and grand juror. Robinson v. State, 178 Miss. 568, 173 So. 451, 1937 Miss. LEXIS 228 (Miss. 1937).

A county prosecuting attorney may be present with the grand jury while considering a case and may find a valid indictment while he is present but he must not improperly influence the jury. State v. Coulter, 104 Miss. 764, 61 So. 706, 1913 Miss. LEXIS 84 (Miss. 1913); Le Barron v. State, 107 Miss. 663, 65 So. 648, 1914 Miss. LEXIS 128 (Miss. 1914).

An indictment found when only fourteen grand jurors were present and twelve or more concurred when finding it and was returned into court by the full grand jury of eighteen members was valid. McCoy v. State, 101 Miss. 613, 57 So. 622, 1911 Miss. LEXIS 122 (Miss. 1911).

The foreman of a grand jury has no authority to discharge a member thereof but the court may do so and he should supply the place by selecting another juror. McCoy v. State, 101 Miss. 613, 57 So. 622, 1911 Miss. LEXIS 122 (Miss. 1911).

It is unlawful for the sheriff to be called into the grand jury room to aid in examining a witness and an indictment based on such testimony is invalid. Herrington v. State, 98 Miss. 410, 53 So. 783, 1910 Miss. LEXIS 77 (Miss. 1910).

The minutes of the court must show that the grand jury was sworn, otherwise an indictment found by them is void. Hardy v. State, 96 Miss. 844, 51 So. 460, 1910 Miss. LEXIS 176 (Miss. 1910).

A plea of not guilty does not waive the right to file a motion to quash a void indictment since permitting such motion is discretionary. Hardy v. State, 96 Miss. 844, 51 So. 460, 1910 Miss. LEXIS 176 (Miss. 1910).

8. Impeachment of indictment by juror.

Grand jurors cannot impeach their indictment by their testimony. Lewis v. State, 132 Miss. 200, 96 So. 169, 1923 Miss. LEXIS 44 (Miss. 1923).

RESEARCH REFERENCES

ALR.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

Am. Jur.

38 Am. Jur. 2d, Grand Jury §§ 9-12, 18.

12 Am. Jur. Pl & Pr Forms (Rev), Grand Jury, Form 2 (challenge to array of grand jury).

CJS.

38A C.J.S., Grand Juries §§ 11, 24-36.

§ 13-5-45. Foreman to be appointed and all to be sworn.

The court shall appoint one of the grand jurors to be foreman of the grand jury, to whom the following oath shall be administered in open court, in the presence of the rest of the grand jurors, to wit:

"You, as foreman of this grand inquest, shall diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service. The counsel of the state, your fellows, and your own you will keep secret. You shall not present any person through malice, hatred or ill will, nor shall you leave any person unpresented through fear, favor or affection, or for any reward, hope or promise thereof, but in all your presentments, you shall present the truth, the whole truth, and nothing but the truth, to the best of your skill and understanding. So help you God."

And the following oath shall be administered to the other jurors, to wit:

"The same oath that your foreman has now taken before you on his part, you, and each of you, shall well and truly observe, and keep on your respective parts. So help you God."

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 1 (128); 1857, ch. 61, art. 130; 1871, § 731; 1880, § 1666; 1892, § 2372; 1906, § 2701; Hemingway's 1917, § 2194; 1930, § 2047; 1942, § 1780.

Cross References — Swearing of state grand jurors pursuant to this section, see § 13-7-15.

Foreman and deputy foreman to be sworn pursuant to this section, see § 13-7-17.

Grand juror compensation, see § 25-7-61.

Rules pertaining to grand juries, see MRCrP 13.1 through 13.7.

JUDICIAL DECISIONS

1. In general.

A trial court did not err in overruling a defendant's motion to quash the indictment and/or demur to the indictment, even though the minutes of the court did not reflect that a grand jury foreman was appointed or that the foreman was given the oath as required by § 13-5-45, where one of the names of the grand jurors was listed on the indictment as the grand jury foreman, the foreman signed the grand jury report and indictment in the slot where the foreman signs, and the foreman's name was listed along with the other sworn grand jurors, since the statute does not provide that the court minutes must reflect that a grand jury foreman was appointed and sworn. Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

A defendant's claim that his indictment for murder was void on the ground that black foremen were systematically not appointed to the grand jury would be rejected where there was no testimony in the record to the effect that failure to select a black grand jury foreman had been intentionally or purposely done and where the crucial period for determining discrimination did not begin until 1975 when the new Jury Selection Act went into effect and there was an insufficient period of time to enable the Court to determine whether there had been constitutionally prohibited discrimination. Johnson v. State, 404 So. 2d 553, 1981 Miss. LEXIS 2234 (Miss. 1981).

In a homicide prosecution, the trial

judge correctly overruled a defense motion to quash the indictment, venire and panel on the ground that blacks and women were systematically excluded from serving as grand jury foremen, where Mississippi followed the "random" method of jury selection and where the evidence was insufficient to establish a prima facie case of discrimination in the selection of jury foremen by trial judges. Herring v. State, 374 So. 2d 784, 1979 Miss. LEXIS 2347 (Miss. 1979).

OPINIONS OF THE ATTORNEY GENERAL

If a grand juror, including a foreman, is absent, the court shall have the authority to cause another to be sworn in his place. The court, not the District Attorney, is responsible for appointing a "substitute" foreman if necessary, who must be administered the foreman's oath in open court, in the presence of the rest of the grand jurors. Peterson, March 9, 2007, A.G. Op. #07-00113, 2007 Miss. AG LEXIS 90.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Grand Jury § 26.

CJS.
38A C.J.S., Grand Juries §§ 60, 65–71.

§ 13-5-47. Judge to charge the grand jury.

The judge shall charge the grand jury concerning its duties and expound the law to it as he shall deem proper, and he shall particularly charge it concerning enforcement of the following statutes:

(1) those against gambling and the unlawful selling and handling of intoxicating liquors;

(2) those relating to gambling with minors, and the giving or selling to them tobacco, narcotics, or liquors;

(3) those providing for the assessment, collection and disbursement of the public revenues, both state and county;

(4) those defining the duties of public officers;

(5) those relating to the collection and paying over of fines and forfeitures;

(6) those relating to providing fire escapes in hotels, theaters and other buildings;

(7) those relating to the management of sixteenth section school trust lands; and

(8) all such other statutes as he shall deem proper at any time.

Moreover, the judge shall especially charge the grand jury with respect to the state forest fire laws as set forth in Section 95-5-25 and Section 92-17-13, and charge that the grand jury shall report to him as to the status of forest protection in the county.

It shall be unlawful for the district attorney or other officer, or person, to deliver to the grand jury the charge required by this section to be delivered by the judge, but this shall not prevent the judge from having the circuit clerk read the charge proposed by the judge, to the grand jury in the presence of the judge, when, by reason of physical infirmity, the judge shall be unable to deliver his charge.

HISTORY: Codes, 1892, § 2373; 1906, § 2702; Hemingway's 1917, § 2195; 1930, § 2048; 1942, §§ 1781, 1782; Laws, 1908, ch. 179; Laws, 1932, ch. 145; Laws, 1970, ch. 340, § 1; Laws, 1978, ch. 525, § 3, eff from and after July 1, 1978.

Cross References — Application of this section to swearing of jurors for state grand jury, see § 13-7-15.

Duty of grand jury to inquire into violations of laws relating to wild animals, birds and fish, see § 49-5-47.

Duty of grand jury to inquire into condition of county roads, see § 65-7-119.

Criminal offense of firing woods or fields of another, see § 97-17-13.

Necessity that indictment or presentment be concurred in by twelve grand jurors, see § 99-7-11.

Duty of grand jury to inquire into breaches of peace bonds, see § 99-23-17.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Extent of authority to charge.
3. Subpoena.

1. In general.

A circuit judge's supplemental charge to the grand jury that citizens had reported to the court that the district attorney had "failed to investigate and prosecute" certain crimes and that, if the jurors should "determine that the district attorney has actively disobeyed investigation of these matters," they were to apply to the court for further instructions singled out the district attorney and his office as targets for grand jury action and should have been expunged for exceeding the judge's authority which did not extend to denunciation of individuals. Necaise v. Logan, 341 So. 2d 91, 1976 Miss. LEXIS 1492 (Miss. 1976).

One indicted for robbery committed seven months prior thereto is not prejudiced by circuit judge's charge to grand jury which made indictment that "there has been a series of outbreaks of crime in your community recently. I ________ want you to bring me these indictments by noon today," as remark did not direct undue attention to any particular single crime. Goss v. State, 205 Miss. 177, 38 So. 2d 700, 1949 Miss. LEXIS 424 (Miss. 1949).

Where the defendant charged with selling liquor relies solely on her testimony as her only evidence, jurors to try the same are incompetent who have heard the judge charge the grand jury that "blind tigers" were unworthy of belief and would commit perjury. Johnson v. State, 106 Miss. 598, 64 So. 261, 1913 Miss. LEXIS 167 (Miss. 1913).

It was prejudicial error as against one convicted of unlawfully selling liquor for the court in charging the grand jury relative to such offense to say, "Have you ever heard the name of C. F. [defendant's name]?" Fuller v. State, 85 Miss. 199, 37 So. 749, 1904 Miss. LEXIS 122 (Miss. 1904).

It is improper for a judge, directly or indirectly, to designate a particular individual as making unlawful sales of intoxicants. If he does and the individual is indicted on seasonable motion the indictment will be quashed. Fuller v. State, 85 Miss. 199, 37 So. 749, 1904 Miss. LEXIS 122 (Miss. 1904).

A conviction for such unlawful sale will be reversed if on overruling an application for a continuance the judge announces, in the presence of jurors, that there has been much complaint about the failure to convict "these criminals" and that the court feared it largely due to continuances. Fuller v. State, 85 Miss. 199, 37 So. 749, 1904 Miss. LEXIS 122 (Miss. 1904).

It is sufficient ground for quashing an indictment under Code 1892 §§ 1120, 1121 (Code 1906 §§ 1201, 1202) that the grand jury sought to be finally discharged without indicting defendant and the court refused to discharge them and instructed them specifically as to the criminal character of defendant's business, saying that the law was plain and it was of opinion that it had sufficient evidence to find an indictment, that other grand juries had indicted, and that the business in which defendant was engaged was a flagrant violation of the statute. Blau v. State, 82 Miss. 514, 34 So. 153, 1903 Miss. LEXIS 145 (Miss. 1903).

2. Extent of authority to charge.

Grand juries are statutorily charged to investigate possible violations of statutes related to expenditure of county funds by county officials. State v. Pacific (Ex parte Jones County Grand Jury, First Judicial Dist.), 705 So. 2d 1308, 1997 Miss. LEXIS 747 (Miss. 1997).

Judge cannot charge grand jury to investigate and/or indict a particular person and, thus, cannot charge grand jury not to investigate and/or indict a particular person. State v. Pacific (Ex parte Jones County Grand Jury, First Judicial Dist.), 705 So. 2d 1308, 1997 Miss. LEXIS 747 (Miss. 1997).

Trial court did not have authority to enjoin county grand jury from investigating district attorney's alleged receipt of improper payments. State v. Pacific (Ex parte Jones County Grand Jury, First Judicial Dist.), 705 So. 2d 1308, 1997 Miss. LEXIS 747 (Miss. 1997).

3. Subpoena.

Trial court properly denied a public utility's motion to quash a grand jury subpoena because issuance of the subpoena was a lawful exercise of the grand jury's investigative authority, and the evidence was relevant to its investigation and had the potential to result in criminal indictments; when the grand jury seeks information relevant to a legitimate criminal investigation, and that information has the potential to support probable cause to indict, the grand jury should not be hindered. Entergy Miss., Inc. v. State, 132 So. 3d 568, 2014 Miss. LEXIS 120 (Miss. 2014).

RESEARCH REFERENCES

ALR.

Modern status of rule regarding necessity of instruction on circumstantial evidence in criminal trial-state cases. 36 A.L.R.4th 1046.

Necessity and content of instructions to jury respecting reasons for or inferences from accused's absence from state criminal trial. 31 A.L.R.4th 676.

Instructions to jury as to credibility of child's testimony in criminal case. 32 A.L.R.4th 1196.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

Am. Jur.

38 Am. Jur. 2d, Grand Jury § 26.

CJS.

38A C.J.S., Grand Juries §§ 100–103.

§ 13-5-49. Repealed.

Repealed by Laws of 1973, ch. 342, § 1, eff from and after passage (approved March 22, 1973).

[Codes, 1892, § 2374; 1906, § 2703; Hemingway's 1917, § 2196; 1930, § 2049; 1942, § 1783]

Editor's Notes — Former § 13-5-49 required all county officers to attend court, hear the charges of the grand jury, and be charged as to their duties.

§ 13-5-51. Places of absent jurors to be filled.

If, after the grand jury has been sworn, any of the members thereof should absent themselves from any cause, or become incompetent to sit, or be excused by the court, the court shall have power to cause others to be sworn in their places.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 1 (131); 1857, ch. 61, art. 132; 1871, § 730; 1880, § 1669; 1892, § 2376; 1906, § 2705; Hemingway's 1917, § 2198; 1930, § 2051; 1942, § 1785.

JUDICIAL DECISIONS

1. In general.

After impaneling a grand jury of sixteen and excusing two members thereof the court was authorized to increase the number of grand jurors to eighteen. Posey v. State, 86 Miss. 141, 38 So. 324, 1905 Miss. LEXIS 35 (Miss. 1905).

OPINIONS OF THE ATTORNEY GENERAL

Based on the Section 13-5-51 and Posey v. State, 38 So. 324 (Miss. 1905), the court, in accordance with the public policy of the state, may fill the vacancies on a grand jury by the same or a similar method or provided by statute for the selection of the original jurors. Landrum, March 29, 1996, A.G. Op. #96-0176.

If a grand juror, including a foreman, is absent, the court shall have the authority to cause another to be sworn in his place. The court, not the District Attorney, is responsible for appointing a "substitute" foreman if necessary, who must be administered the foreman's oath in open court, in the presence of the rest of the grand jurors. Peterson, March 9, 2007, A.G. Op. #07-00113, 2007 Miss. AG LEXIS 90.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Grand Jury § 16.

CJS.

38A C.J.S., Grand Juries § 65.

§ 13-5-53. Adjournment of grand jury to a day; pay in such case.

The court or judge, in its discretion, may adjourn the grand jury to a subsequent day in termtime or vacation, and the jurors shall receive pay only for the number of days they shall be actually engaged in the performance of their duties.

HISTORY: Codes, 1880, § 1670; 1892, § 2377; 1906, § 2706; Hemingway's 1917, § 2199; 1930, § 2052; 1942, § 1786; Laws, 1983, ch. 499, § 19, eff from and after July 1, 1983.

Cross References — Keeping of jury fee book by circuit court clerk, see § 9-7-131.
Imposition and collection of jury-tax in circuit court, see § 9-7-133.
Making and filing of bill of costs generally, see § 11-53-65.

JUDICIAL DECISIONS

1. In general.

In a prosecution for capital murder an indictment returned by a grand jury was not void on the asserted ground that the grand jury was recalled by the district attorney's office, where the judge recalled the grand jury initially, where once the grand jury was impanelled or recalled it was in session for the duration of the term or until discharged, and where in the present case the district attorney merely selected the days it would actually meet and was not recalling the grand jury. Oates v. State, 421 So. 2d 1025, 1982 Miss. LEXIS 2267 (Miss. 1982).

The fact that the grand jury was in session at the time defendant was arrested for armed robbery and then adjourned without returning an indictment, has no bearing on the question of the right to release on bail, in absence of proof of any investigation of the case by the grand jury. Wooton v. Bethea, 209 Miss. 374, 47 So. 2d 158, 1950 Miss. LEXIS 401 (Miss. 1950).

A grand jury may be recalled after it is discharged. Bell v. State, 118 Miss. 140, 79 So. 85, 1918 Miss. LEXIS 65 (Miss. 1918); Kyzar v. State, 125 Miss. 79, 87 So. 415, 1921 Miss. LEXIS 95 (Miss. 1921).

Under ch. 253 Laws of 1916 it is mandatory that a circuit judge impanel a grand jury during the first half of each term of court but there is no limitation as to how long it shall continue. Bell v. State, 118 Miss. 140, 79 So. 85, 1918 Miss. LEXIS 65 (Miss. 1918).

Under Code 1906, §§ 2706, 2718, the court may reassemble the grand jury after its discharge when necessary during the same term of the court. Haynes v. State, 93 Miss. 670, 47 So. 522 (Miss. 1908).

RESEARCH REFERENCES

CJS.

38A C.J.S., Grand Juries §§ 95–98, 100, 101.

§ 13-5-55. Grand jury to inspect jail; sheriff punishable.

Each grand jury which is impaneled shall make a personal inspection of the county jail, its condition, sufficiency for the safekeeping of prisoners, and their accommodation and health, and make reports thereof to the court. For any violation or neglect of duty as to the jail, the sheriff may be punished as for a misdemeanor, or may be fined as for a contempt, such not to exceed Fifty Dollars ($50.00).

HISTORY: Codes, 1857, ch. 64, art. 251; 1871, § 2844; 1880, § 1673; 1892, § 2378; 1906, § 2707; Hemingway's 1917, § 2200; 1930, § 2053; 1942, § 1787; Laws, 1983, ch. 499, § 20.

Cross References — Duty of sheriff to furnish prisoners proper necessities, see §§ 19-25-71, 47-1-51.

Criminal offense of maltreating county prisoners, see § 47-1-27.

Duty of grand jury to examine records of county prisoners and their treatment and condition, see § 47-1-31.

Clothing and food to be furnished county convicts, see § 47-1-47.

Hours of labor of county convicts, see § 47-1-47.

Furnishing of medical and surgical aid to county prisoners, see § 47-1-57.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

A sheriff may provide a meal from the county jail at no cost to the members of the grand jury as part of their inspection of the county jail. Caranna, April 21, 2000, A.G. Op. #2000-0207.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Grand Jury §§ 2, 3, 33, 34 et seq.

CJS.
38A C.J.S., Grand Juries §§ 104–115, 116, 117, 123–133.

§ 13-5-57. Grand jury may examine all county offices.

The grand jury shall have free access at all proper hours to the papers, records, accounts and books of all county officers, for all examinations which, in its discretion, it may see fit to make, and may make report to the court in relation thereto.

HISTORY: Codes, 1857, ch. 64, art. 251; 1871, § 2845; 1880, § 1674; 1892, § 2379; 1906, § 2708; Hemingway's 1917, § 2201; 1930, § 2054; 1942, § 1788.

RESEARCH REFERENCES

ALR.
Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct. 63 A.L.R.3d 586.

Am. Jur.
38 Am. Jur. 2d, Grand Jury §§ 2, 3, 33, 34 et seq.

CJS.
38A C.J.S., Grand Juries §§ 104–115, 116, 117, 123–133.

Law Reviews.
1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 13-5-59. Grand jury to examine tax collector's books.

It shall be the duty of each grand jury which is impaneled to examine the tax collector's books and his reports and settlements, and make report thereon.

HISTORY: Codes, 1880, § 1675; 1892, § 2380; 1906, § 2709; Hemingway's 1917, § 2202; 1930, § 2055; 1942, § 1789; Laws, 1983, ch. 499, § 21.

Cross References — Duty of clerk of board of supervisors to examine accounts, dockets and records of county officers and to report to grand jury, see § 19-17-17.

Monthly report of county tax collector of all taxes collected by him during previous month, see § 27-29-11.

Report and settlement of county tax collector at end of fiscal year, see § 27-29-13.

RESEARCH REFERENCES

CJS.
38A C.J.S., Grand Juries §§ 104–115, 116, 117, 123–133.

§ 13-5-61. Grand jury not to disclose secrets of jury-room.

A grand juror, except when called as a witness in court, shall not disclose any proceeding or action had by the grand jury in relation to offenses brought before it, within six (6) months after final adjournment of the grand jury upon which he served, nor shall any grand juror disclose the name or testimony of any witness who has been before the grand jury on pain of fine or imprisonment for contempt of court.

HISTORY: Codes, 1857, ch. 64, art. 252; 1871, § 2846; 1880, § 1676; 1892, § 2381; 1906, § 2710; Hemingway's 1917, § 2203; 1930, § 2056; 1942, § 1790; Laws, 1983, ch. 499, § 22, eff from and after July 1, 1983.

Cross References — Exemption of jury deliberations from provisions of open meetings law, see § 25-41-3.

Penalty on grand juror for disclosing facts about indictments, see § 97-9-53.

JUDICIAL DECISIONS

1. In general.

The general rules of grand jury secrecy have no application to testimony given by witnesses who are to be used by the State at a pretrial hearing or at trial with respect to charges lodged by an indictment rendered and served as a result of such testimony. Addkison v. State, 608 So. 2d 304, 1992 Miss. LEXIS 452 (Miss. 1992).

Grand jurors are prohibited from giving evidence under oath and, therefore, an evidentiary hearing to determine the effect of improper influences on a grand jury would be prohibited. Hood v. State, 523 So. 2d 302, 1988 Miss. LEXIS 74 (Miss. 1988).

RESEARCH REFERENCES

ALR.

Discovery, in civil proceeding, of records of criminal investigation by state grand jury. 69 A.L.R.4th 298.

What are "matters occurring before the grand jury" within prohibition of Rule 6(e) of the Federal Rules of Criminal Procedure. 50 A.L.R. Fed. 675.

What is "judicial proceeding" within Rule 6(e)(3)(C)(i) of the Federal Rules of Criminal Procedure permitting disclosure of matters occurring before grand jury when so directed by court preliminarily to or in connection with such proceeding. 52 A.L.R. Fed. 411.

Who are "government personnel" within meaning of Rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure to whom matters occurring before grand jury may be disclosed. 54 A.L.R. Fed. 805.

Relief remedy, or sanction for violation of Rule 6(e) of Federal Rules of Criminal Procedure, prohibiting disclosure of matters occurring before grand jury. 73 A.L.R. Fed. 112.

§ 13-5-63. Witnesses before grand jury may be subpoenaed and sworn.

The foreman of the grand jury shall have power to order subpoenas for all witnesses desired to be produced, and he shall also have power to swear all witnesses. A record shall be kept by the foreman and returned to court, certified and signed by the foreman, of the names of all witnesses sworn before the grand jury.

HISTORY: Codes, 1857, ch. 61, art. 134; 1871, § 735; 1880, § 1677; 1892, § 2382; 1906, § 2711; Hemingway's 1917, § 2204; 1930, § 2057; 1942, § 1791.

Cross References — Issuance of subpoenas to compel attendance of witnesses in court, see §§ 13-3-93, 99-9-11.

Applications by district attorney to clerk of circuit court in vacation for subpoena for witnesses to attend before grand jury at next term, see § 99-9-23.

Attachment of witnesses failing to appear before grand jury, see § 99-9-25.

Issuance of subpoena for a witness by justice of the peace, see § 99-33-5.

JUDICIAL DECISIONS

1. In general.

The opinion of a well-respected federal judge was improper influence and such evidence should not have been presented to the grand jury. Hood v. State, 523 So. 2d 302, 1988 Miss. LEXIS 74 (Miss. 1988).

The filing of the list of witnesses sworn before the grand jury in the circuit clerk's grand jury docket prior to trial fulfilled the requirements of § 13-5-63. Shaw v. State, 521 So. 2d 1278, 1987 Miss. LEXIS 2953 (Miss. 1987).

Statute was complied with where list of witnesses was filed with clerk, which constituted return to court. Shaw v. State, 513 So. 2d 916, 1987 Miss. LEXIS 2816 (Miss. 1987).

The important and solemn responsibilities of the grand jury ought to be performed without fear or favor and without any manner of influence, and the door to the grand jury should be closed to outsiders who are not witnesses and who have no official business to perform. Case v. State, 220 So. 2d 289, 1969 Miss. LEXIS 1447 (Miss. 1969).

It is improper for a private prosecuting attorney to go before the grand jury. Case v. State, 220 So. 2d 289, 1969 Miss. LEXIS 1447 (Miss. 1969).

A committee of the bar association whose motives were admittedly good should not be permitted to appear before the grand jury. Case v. State, 220 So. 2d 289, 1969 Miss. LEXIS 1447 (Miss. 1969).

The fact that a forestry commission employee, who investigated a forest fire and talked to the witnesses but had no personal knowledge of the facts, testified before the grand jury that he brought the case up in justice of the peace court and had the witnesses there for the preliminary hearing, did not place him in the category of a special prosecutor employed to assist with the prosecution, and hence his appearance before the grand jury was not an improper influence. Case v. State, 220 So. 2d 289, 1969 Miss. LEXIS 1447 (Miss. 1969).

The appearance of a forestry commission employee, who had investigated a forest fire and talked to the witnesses, but had no personal knowledge of the facts, did not constitute an improper influence on the grand jury which indicted the defendant on a charge of feloniously firing woods not his own. Case v. State, 220 So. 2d 289, 1969 Miss. LEXIS 1447 (Miss. 1969).

Witnesses who voluntarily appear before grand juries and other investigative bodies have a constitutional right not to be required to testify against themselves. Kellum v. State, 194 So. 2d 492, 1967 Miss. LEXIS 1410 (Miss. 1967).

Presence during session in grand jury room of any person other than the witness undergoing examination and the duly authorized prosecuting officer is improper, in the absence of any imperative necessity therefor. Sanders v. State, 198 Miss. 587, 22 So. 2d 500, 1945 Miss. LEXIS 231 (Miss. 1945).

RESEARCH REFERENCES

ALR.

Validity of indictment where grand jury heard incompetent witness. 39 A.L.R.3d 1064.

Am. Jur.

12 Am. Jur. Pl & Pr Forms (Rev ed), Grand Jury, Form 1 (subpoena to appear before grand jury).

38 Am. Jur. Trials, Representing the Grand Jury Target Witness, §§ 1 et seq.

CJS.

38A C.J.S., Grand Juries §§ 113, 134, 145-149, 159-225.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 13-5-65. Impaneling of petit juries.

After the drawing of the grand jury, the remaining jurors in attendance shall be impaneled into three petit juries for the first week of court if there be a sufficient number left, and, if not, the court may direct a sufficient number for that purpose to be drawn and summoned. If there be more than enough jurors for the three juries, or for two juries if the court shall direct only two to be impaneled, the excess may be discharged, or they may be retained, in the discretion of the court, to serve as talesmen. If so retained, they shall have the privilege of members of the regular panel, of exemption from service.

HISTORY: Codes, 1892, § 2383; 1906, § 2712; Hemingway's 1917, § 2205; 1930, § 2058; 1942, § 1792; Laws, 1938, ch. 301.

Cross References — Summoning and impaneling of jurors for special court of eminent domain, see §§ 11-27-11, 11-27-13.

Summoning of jurors for trial before justice of peace, see § 11-9-143.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Drawing jurors from bystanders.

1. In general.

In prosecution for unlawful possession of intoxicating liquor, where only four jurors were on the jury panel and presumably twelve jurors were at the time deliberating another case, and trial judge entered order adjudicating that there were insufficient number of jurors on the petit jury panels for the week from which to obtain a jury to try the case and the sheriff was directed to summon from the body of the county twelve men to serve as jurors in the case and the sheriff called additional jurors from the bystanders in the courtroom and the jury so impaneled was tendered for trial, defendant's motion to quash the panel should have been sustained and enough jurors to compute the jury panels should have been drawn from the jury box and summoned. Moffett v. State, 220 Miss. 587, 71 So. 2d 303, 1954 Miss. LEXIS 475 (Miss. 1954).

It is only when the full panels have been drawn and made up and are subsequently exhausted that the trial judge may direct the sheriff to select additional men from the body of the county without drawing them from the jury box. Moffett v. State, 220 Miss. 587, 71 So. 2d 303, 1954 Miss. LEXIS 475 (Miss. 1954).

A fairer trial was assured the defendant in a murder prosecution by the court's overruling a motion, made after the case had been called for trial and while the jury was being selected, to call additional jurors from the jury box after the regular panel and special venire had both been exhausted, leaving the defendant with only two peremptory challenges which he immediately expended, than would have been by drawing from the general jury box which was so nearly depleted that many jurors would have had to be drawn from the box of the district where the homicide occurred. Lewis v. State, 201 Miss. 48, 28 So. 2d 122, 1946 Miss. LEXIS 356 (Miss. 1946), cert. denied, 331 U.S. 785, 67 S. Ct. 1305, 91 L. Ed. 1816 (U.S. 1947).

This section [Code 1942, § 1792], applies to drawing of jurors for regular panels, and is inapplicable to jurors summoned to complete a panel for the trial of a particular case made necessary by the exhaustion of regular panels for the week. Smith v. State, 196 Miss. 524, 18 So. 2d 300, 1944 Miss. LEXIS 225 (Miss. 1944).

Where both of two regular panels for the week became exhausted before the jury in a criminal case was completed, whereupon the court ordered the sheriff "to go into the body of the county and bring in 13 jurors," which the sheriff did, summoning no jurors who were then in the courtroom, defendant's objection that jurors for completion of the panel should be drawn from the jury box as required by this section [Code 1942, § 1792] and not from a panel composed in whole or in part of jurors so summoned by sheriff, was without merit. Smith v. State, 196 Miss. 524, 18 So. 2d 300, 1944 Miss. LEXIS 225 (Miss. 1944).

The court should not lecture the petit jury and acquaint them with his desire to have a business term and have the court self-supporting, although such lecture is not ground for reversal. Butler v. State, 102 Miss. 575, 59 So. 845, 1912 Miss. LEXIS 92 (Miss. 1912); Cook v. State, 59 So. 846 (Miss. 1912).

2. Drawing jurors from bystanders.

The circuit court did not err in refusing defendant's request in a prosecution for burglary to complete the jury, where there was an insufficient number, by drawing additional names from the general jury box of the county, and in directing the sheriff to complete the required number from bystanders, where the words providing that juries might be completed from the bystanders as it appeared in the former enactment and omitted under the amendatory act, applied only to the original organization of the court in the first week of the term; in other words, neither Code 1930, § 2058, nor chapter 301, Laws of 1938, dealt with or gave directions to the trial court as to the procedure in handling a jury after the original organization of the court in the first week of that term. McCary v. State, 187 Miss. 78, 192 So. 442, 1939 Miss. LEXIS 103 (Miss. 1939).

Where only sixteen of twenty jurors summoned were present and court excused eight, there was no irregularity where rest were called from bystanders sheriff requested to be present. Harris v. State, 155 Miss. 794, 125 So. 253, 1929 Miss. LEXIS 359 (Miss. 1929).

Panel should not be quashed except for fraud and unless there was total departure from course described by statute. Harris v. State, 155 Miss. 794, 125 So. 253, 1929 Miss. LEXIS 359 (Miss. 1929).

Persons whom sheriff had previously notified to be at court were bystanders within jury statute. Harris v. State, 155 Miss. 794, 125 So. 253, 1929 Miss. LEXIS 359 (Miss. 1929).

That judge anticipated shortage of jurors and asked sheriff to request persons to be present at court did not show departure from statute. Harris v. State, 155 Miss. 794, 125 So. 253, 1929 Miss. LEXIS 359 (Miss. 1929).

Where the regular panel are disqualified the court trying the case may form a jury with talesmen summoned from the bystanders. Whitehead v. State, 97 Miss. 537, 52 So. 259, 1910 Miss. LEXIS 226 (Miss. 1910).

RESEARCH REFERENCES

ALR.

Impaneling or selection of jury in accused's absence. 26 A.L.R.2d 762.

Juror's reading of newspaper account of trial in criminal case during its progress as ground for mistrial, new trial or reversal. 31 A.L.R.2d 417.

Cure of prejudice resulting from statement by prospective juror during voir dire, in presence of other prospective jurors, as to defendant's guilt. 50 A.L.R.4th 969.

Am. Jur.

47 Am. Jur. 2d, Jury §§ 148 et seq.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Forms 91-112 (selecting, drawing, and summoning of jurors).

CJS.

50 C.J.S., Juries §§ 514 et seq.

§ 13-5-67. Impaneling of alternate jurors.

Except in cases in which jury selection and selection of alternate jurors is governed by rules promulgated by the Mississippi Supreme Court, whenever, in the opinion of a circuit judge or chancellor presiding in a case in which a jury is to be used, the trial is likely to be a protracted one, such circuit judge or chancellor, in his discretion, may direct that one (1) or two (2) jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges for cause, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged at the time the jury retires to consider its verdict. In capital cases the defendant and the state shall each be allowed two (2) peremptory challenges to alternate jurors in addition to those otherwise provided by law. In all other cases each party shall be allowed one (1) peremptory challenge to alternate jurors in addition to those otherwise provided by law. In any criminal case all peremptory challenges by the state shall be made before the alternate juror is presented to the defendant. The additional peremptory challenges provided for herein may be used against an alternate juror only, and other peremptory challenges allowed by law may not be used against an alternate juror.

HISTORY: Codes, 1942, § 1792.5; Laws, 1954, ch. 241, §§ 1, 2 [¶¶ 1-2]; Laws, 1991, ch. 573, § 103, eff from and after July 1, 1991.

Cross References — Rules relative to jurors, juries, and jury verdicts, see Miss. R. Civ. P. 47 and 48.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Application.

1. In general.

Defendant's allegation on appeal that a juror should have been stricken was procedurally barred because defendant failed to object to the juror's competency at trial. Wright v. State, 9 So. 3d 447, 2009 Miss. App. LEXIS 243 (Miss. Ct. App. 2009).

At the hearing on defendant's motion for a new trial, the juror testified that she did not know why she did not respond when asked if anyone knew defendant, adding that she did not know defendant, only that she knew of him from seeing him around the community and was aware he had dated her daughter some 10 years earlier. The juror testified that she held no bias or hard feelings towards defendant, and the trial court properly found incredible defendant's testimony that he was unaware of the juror's presence on the jury until after trial, and found it more likely that defendant believed the juror would have been a favorable juror, and therefore he did not challenge her; thus, the denial of defendant's motion for a new trial on the alleged basis that the juror withheld information and precluded defendant from having an impartial jury was not an abuse of discretion. Doss v. State, 906 So. 2d 836, 2004 Miss. App. LEXIS 1150 (Miss. Ct. App. 2004).

Defendant's murder conviction was proper where the denial of defendant's motion for a mistrial was permissible, even though a juror failed to disclose certain information during voir dire, because the jury panel was untainted; the juror stated that she never discussed the case with other jurors, and she was removed from the panel. Ables v. State, 850 So. 2d 172, 2003 Miss. App. LEXIS 635 (Miss. Ct. App. 2003).

Where a driver sued a utility company for negligence after the driver drove into utility poles stacked in a trailer parked off a highway, on voir dire, the jurors did not conceal material information that denied the driver the right of a fair and impartial jury. Myles v. Entergy Miss., Inc., 828 So. 2d 861, 2002 Miss. App. LEXIS 547 (Miss. Ct. App. 2002).

It was harmless error for trial judge to allow an alternate juror to retire to the deliberation room with the rest of the jury after the close of the trial because the alternate juror did not contribute to the deliberations in any way and the trial judge actually polled the jurors to be certain that no harm was done. Maldonado v. State, 796 So. 2d 247, 2001 Miss. App. LEXIS 298 (Miss. Ct. App. 2001).

The mere presence of an alternate juror during jury deliberation, without evidence that the deliberation was affected by it, does not constitute reversible error. Department of Human Servs. v. Moore, 632 So. 2d 929, 1994 Miss. LEXIS 110 (Miss. 1994).

A trial judge in a murder prosecution did not err in refusing to exclude a juror after she had been accepted, even though the juror's daughter had been murdered six years earlier, where the attorneys inadvertently failed to ask the juror during voir dire whether a member of her family had been a victim of a crime, and therefore the juror neither withheld nor misrepresented information. Spivey v. Mowdy, 617 So. 2d 999, 1992 Miss. LEXIS 688 (Miss. 1992).

It was error for a trial court to excuse a juror and replace her with an alternate after the jury had retired to deliberate a sentencing verdict, since substitution of a juror with an alternate must occur prior to the time the jury retires to consider its verdict. Balfour v. State, 598 So. 2d 731, 1992 Miss. LEXIS 131 (Miss. 1992).

In civil jury trial in Federal District Court, equal protection component of Fifth Amendment due process clause prohibits private litigant from using peremptory challenge to exclude prospective jurors on account of race because such race-based exclusion violates equal protection rights of excluded jurors; opposing litigant has third-party standing to raise excluded jurors' rights in opposing litigant's own behalf; and, while role of litigants in determining jury's composition may provide one reason for wide acceptance of jury system and its verdicts, if race stereotypes are price for acceptance of jury panel, price is too high to meet standard of constitution. Edmonson v. Leesville Concrete Co., 500 U.S. 614, 111 S. Ct. 2077, 114 L. Ed. 2d 660, 1991 U.S. LEXIS 3023 (U.S. 1991).

A trial court erred when it seated an alternate juror after the alternate jurors had been dismissed from jury service and after the jury had been in deliberations for almost 2 hours, where the alternate juror had been neither sequestered nor instructed regarding the case for the period beginning when the jury retired and until he was placed on the jury panel. Folk v. State, 576 So. 2d 1243, 1991 Miss. LEXIS 57 (Miss. 1991).

In determining whether a juror is "disqualified" within the meaning of § 13-5-67 when he or she has withheld information or misrepresented material facts on voir dire examination, the test is whether the juror withheld substantial information or misrepresented material facts in the face of a clearly worded question which was relevant to the case at bar. Voir dire examination is often the most crucial crucible in forging the primary instrument of justice-the fair and impartial jury. When offering challenges for cause and challenges peremptory, parties and their lawyers must rely on the objective candor and responsiveness of prospective jurors, and nothing turns on who asks the question, so long as it was clearly worded. Following a jury's verdict, where a party shows that a juror withheld substantial information or misrepresented material facts, and where a full and complete response would have a provided a valid basis for challenge for cause, the trial court must grant a new trial; prejudice is presumed. Where, as a matter common experience, a full and correct response would have provided the basis for a peremptory challenge, not rising to the dignity of a challenge for cause, the courts have greater discretion, though a discretion that should always be exercised against the backdrop of the duty to secure to each party trial before a fair and impartial jury. Thus, in a prosecution for felony sale of alcoholic and intoxicating beverages, the circuit court's action in removing a juror was within the scope of its authority where the juror failed to respond on 3 separate occasions during voir dire to defense counsel's questions as to whether any prospective juror or any "relative or member of the juror's immediate family" had been involved in a criminal proceeding, and the juror's husband had 2 liquor-related criminal convictions. Myers v. State, 565 So. 2d 554, 1990 Miss. LEXIS 294 (Miss. 1990).

Section 13-5-67 is read against the backdrop of the general rule that a party who fails to object to the jury's composition before it is impaneled waives any right to complain thereafter. The word "disqualified" in § 13-5-67 has breadth considerably beyond that of § 13-5-1's initial qualifications for jury service. Myers v. State, 565 So. 2d 554, 1990 Miss. LEXIS 294 (Miss. 1990).

It was harmless error for trial judge to allow 2 alternate jurors to retire with jury where there was no showing of any resulting prejudice, although action of trial judge was clearly in violation of statute and alternate jurors are to be discharged and not be present or participate in deliberations under any circumstances not prescribed by statute. Luster v. State, 515 So. 2d 1177, 1987 Miss. LEXIS 2912 (Miss. 1987).

Trial judge who chose to hear matter concerning dismissal of juror for good cause, and replacement of her with an alternate, in chambers should have informed counsel for both sides and given opportunity for them to be present, or at least to object and make record; however, counsel cited no actual prejudice to defendant arising out of substitution of jurors, and court assumed that juror was excused for good cause. Stevens v. State, 513 So. 2d 603, 1987 Miss. LEXIS 2834 (Miss. 1987).

Fact that a juror subpoenaed to appear before a county court had been placed onto a circuit court jury panel, which panel tried a homicide case did not require reversal of panel's verdict, although when the error was discovered and defendant's motion made, after both sides had rested but before the case was submitted to the jury, however, the juror mistakenly sitting should have been replaced with an alternate juror. Porter v. State, 492 So. 2d 970, 1986 Miss. LEXIS 2534 (Miss. 1986).

When bailiff excuses juror on last day of murder trial on basis of death of juror's grandmother, rather than escorting juror back to court and informing trial judge of situation so judge can determine whether juror is unable to perform duty and order excusal, and trial court subsequently impanels alternate juror without objection by defense, and defendant fails to show prejudice resulting from impaneling of alternate, conviction is not subject to reversal on basis of improper excusal of original juror. Fuller v. State, 468 So. 2d 68, 1985 Miss. LEXIS 2055 (Miss. 1985).

In a prosecution for capital murder, the trial court erred in permitting the state to peremptorily challenge on juror after the panel had been accepted on the grounds that the juror's son was under indictment in a criminal matter where the record did not show that the juror was incompetent to serve and where the challenged juror could not be presumed to be incompetent merely because her son had been indicted; the trial court further erred by denying defendant's peremptory challenge to the alternate juror, where it seemed to discriminate against defendant in favor of the state. Fairness required that defendant be granted a new trial. Caldwell v. State, 381 So. 2d 591, 1980 Miss. LEXIS 1862 (Miss. 1980).

Absent a showing that the defendant was prejudiced thereby, the fact that it was discovered during the course of a misdemeanor trial in circuit court one of the jurors had served upon the jury which heard the case in justice of the peace court, was thereby removed, and replaced with an alternate juror, such did not constitute error. Russell v. State, 220 So. 2d 334, 1969 Miss. LEXIS 1457 (Miss. 1969).

2. Application.

While a juror's note-taking, which resulted in a communication to an attorney, may not have been intentional misconduct, the juror's notes indicated that he had made up his mind about the case before all evidence had been presented by both sides, and therefore could not be impartial. The trial judge acted within his discretion in excusing the juror and replacing him with an alternate juror. Young v. State, — So. 3d —, 2018 Miss. App. LEXIS 209 (Miss. Ct. App. May 1, 2018), cert. denied, 258 So. 3d 286, 2018 Miss. LEXIS 519 (Miss. 2018).

Seating of an alternate juror during the sentencing phase did not violate Mississippi's capital sentencing scheme, Miss. Code Ann. § 99-19-101, as this section allowed the substitution of alternative jurors in capital cases. Evans v. State, 226 So. 3d 1, 2017 Miss. LEXIS 249 (Miss. 2017).

Defendant made no assertion that his Sixth Amendment right to an impartial jury was violated due to the jury-selection process because he did not claim the jury was composed of incompetent jurors; defendant failed to show how the departure from that statute and rules regarding peremptory challenges affected his fundamental, substantive rights or otherwise led to a manifest miscarriage of justice. Carr v. State, 190 So. 3d 1, 2015 Miss. App. LEXIS 605 (Miss. Ct. App. 2015).

Misallocation of defendant's peremptory challenges did not affect a fundamental, substantive right because so long as the jury that sat was impartial, the fact that defendant had to pool his regular and alternate peremptory challenges to achieve that result did not mean his Sixth Amendment rights were violated; despite being selected in an irregular manner, the jury was a legal jury with the authority to render a verdict against defendant. Carr v. State, 190 So. 3d 1, 2015 Miss. App. LEXIS 605 (Miss. Ct. App. 2015).

Circuit court properly exercised its discretion in excusing a juror who was allegedly sleeping during the presentation of the audio evidence of the victim's interview with the doctor and replacing him with an alternate juror. Carpenter v. State, 132 So. 3d 1053, 2013 Miss. App. LEXIS 551 (Miss. Ct. App. 2013), cert. denied, 132 So. 3d 579, 2014 Miss. LEXIS 142 (Miss. 2014).

Trial court did not abuse its discretion in denying defendant's motion for a new trial based upon juror misconduct because a juror testified that she did not have any of information sought during voir dire prior to trial or during voir dire. Vaughn v. State, 111 So. 3d 1289, 2013 Miss. App. LEXIS 225 (Miss. Ct. App. 2013).

Defendant's convictions for manslaughter and rape were proper because there was no error in the trial court's dismissal of a juror. The trial court specifically found on the record that the particular juror had failed to follow clear instructions given numerous times during the trial not to speak to outside persons; the trial court further noted that the failure to follow basic instructions demonstrated additional concern that the juror might be unable to follow other, more important instructions to the jury concerning the law in the case. Brown v. State, 999 So. 2d 853, 2008 Miss. App. LEXIS 320 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 852, 2009 Miss. LEXIS 44 (Miss. 2009).

Defendant's conviction for aggravated assault was appropriate because a juror's statement that she could not sit in judgment of another person properly led to her excuse for cause; additionally, she was excused immediately following the impaneling of the jury, which was within the time frame allotted in Miss. Code Ann. § 13-5-67. Hawthorne v. State, 944 So. 2d 928, 2006 Miss. App. LEXIS 910 (Miss. Ct. App. 2006).

Trial judge was in violation of Miss. Code Ann. § 13-5-67 where, although the judge attempted to assess and rectify the damage done by the alternate juror, it was apparent that there may have been a contaminated verdict by having the alternate juror sit in on jury deliberations, and defendant was prejudiced by the presence of the alternate juror; therefore, defendant was entitled to a new trial. Archie v. State, 844 So. 2d 1173, 2003 Miss. App. LEXIS 401 (Miss. Ct. App. 2003).

The court did not abuse its discretion when it replaced a juror who disappeared from the courthouse after the jury was sworn in. Vaughn v. State, 712 So. 2d 721, 1998 Miss. LEXIS 146 (Miss. 1998).

RESEARCH REFERENCES

ALR.

Constitutionality and construction of statute or court rule relating to alternate or additional jurors or substitution of jurors during trial. 84 A.L.R.2d 1288.

Presence of alternate juror in jury room as ground for reversal of state criminal conviction. 15 A.L.R.4th 1127.

Use of peremptory challenges to exclude Caucasian persons, as a racial group, from criminal jury–post-Batson state cases. 47 A.L.R.5th 259.

Selection and impaneling of alternate jurors under Rule 24(c) of Federal Rules of Criminal Procedure. 119 A.L.R. Fed. 589.

Am. Jur.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Form 131 (order excusing juror).

CJS.

50 C.J.S., Juries §§ 254-261, 519.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Juries and Jury Verdicts – Rules 38, 48-51, and 59. 52 Miss. L. J. 163, March 1982.

§ 13-5-69. Examination of jurors by attorneys or litigants.

Except in cases in which the examination of jurors is governed by rules promulgated by the Mississippi Supreme Court, the parties or their attorneys in all jury trials shall have the right to question jurors who are being impaneled with reference to challenges for cause, and for peremptory challenges, and it shall not be necessary to propound the questions through the presiding judge, but they may be asked by the attorneys or by litigants not represented by attorneys.

HISTORY: Codes, 1930, § 2068; 1942, § 1802; Laws, 1922, ch. 294; Laws, 1991, ch. 573, § 104, eff from and after July 1, 1991.

Cross References — When an opinion as to guilt or innocence will not render person incompetent in a criminal case, see § 13-5-79.

Challenges to arrays and quashals of venires facias generally, see § 13-5-81.

Number of peremptory challenges allowed in criminal cases, see § 99-17-3.

Peremptory challenges of jointly tried defendants, see § 99-17-5.

Rules relative to jurors, juries, and jury verdicts, see Miss. R. Civ. P. 47 and 48.

Voir dire examination of jurors in circuit and county courts, see Miss. Uniform Rule of Circuit and County Court Practice 3.05.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application, generally.
3. Examination as to particular matters.

1. Validity.

Trial court did not err in refusing to enforce a blanket denial of the use of peremptory strikes in jury selection where there was no Mississippi precedent binding on the appellate court that suggested that Miss. Code Ann. § 13-5-69 was unconstitutional under any provisions of the Mississippi Constitution. Plair v. State, 867 So. 2d 289, 2004 Miss. App. LEXIS 192 (Miss. Ct. App. 2004).

This section [Code 1942, § 1802] is not unconstitutional as taking away the inherent powers of the court. House v. State, 133 Miss. 675, 98 So. 156, 1923 Miss. LEXIS 183 (Miss. 1923).

2. Construction and application, generally.

Juror is disqualified under statute where on voir dire examination he or she has withheld information or misrepresented material facts. Collins v. State, 691 So. 2d 918, 1997 Miss. LEXIS 6 (Miss.), cert. denied, 522 U.S. 877, 118 S. Ct. 198, 139 L. Ed. 2d 135, 1997 U.S. LEXIS 5567 (U.S. 1997).

Trial court has considerable discretion in determining when questions asked by prosecutors to probe prejudices of prospective jurors are improper. Taylor v. State, 672 So. 2d 1246, 1996 Miss. LEXIS 193 (Miss.), cert. denied, 519 U.S. 994, 117 S. Ct. 486, 136 L. Ed. 2d 379, 1996 U.S. LEXIS 7020 (U.S. 1996).

Trial court's failure to move prospective jurors to one side of courtroom, which was crowded with spectators, and instead requiring defendant to conduct voir dire with jury panel scattered throughout courtroom, interspersed with spectators, was not clear error in armed robbery prosecution, where defendant counsel asked questions to the panel and was able to ask questions to individuals who responded to his questions. McLemore v. State, 669 So. 2d 19, 1996 Miss. LEXIS 9 (Miss. 1996).

It is up to court to ensure that defendant in fact received effective voir dire. McLemore v. State, 669 So. 2d 19, 1996 Miss. LEXIS 9 (Miss. 1996).

Defendant was not denied opportunity to intelligently use peremptory challenges when trial court conducted voir dire itself; trial court asked venire whether anyone would automatically vote for death penalty regardless of mitigating circumstances, counsel for both sides stated they were satisfied with voir dire, and defendant did not ask trial court to further voir dire jurors and did not ask that she be allowed to do so. Ballenger v. State, 667 So. 2d 1242, 1995 Miss. LEXIS 451 (Miss. 1995), cert. denied, 518 U.S. 1025, 116 S. Ct. 2565, 135 L. Ed. 2d 1082, 1996 U.S. LEXIS 4177 (U.S. 1996).

Voir dire is conducted under supervision of trial court, and a great deal must, of necessity, be left to its sound discretion. Ballenger v. State, 667 So. 2d 1242, 1995 Miss. LEXIS 451 (Miss. 1995), cert. denied, 518 U.S. 1025, 116 S. Ct. 2565, 135 L. Ed. 2d 1082, 1996 U.S. LEXIS 4177 (U.S. 1996).

Court has duty to see that competent, fair and impartial jury is empaneled. Tighe v. Crosthwait, 665 So. 2d 1337, 1995 Miss. LEXIS 500 (Miss. 1995).

To ensure party's right to fair trial and impartial jury, free of bias and prejudice, Mississippi law allows broad latitude on voir dire. Tighe v. Crosthwait, 665 So. 2d 1337, 1995 Miss. LEXIS 500 (Miss. 1995).

While it is error to refuse to allow party to question prospective jurors to determine whether they are biased, prejudiced or have any interest in outcome of case, counsel is not free of limits during voir dire; rather, voir dire examination is subject to reasonable limitations, especially in insurance cases. Tighe v. Crosthwait, 665 So. 2d 1337, 1995 Miss. LEXIS 500 (Miss. 1995).

A trial court in a capital murder prosecution did not err by allowing the prosecutor to question potential jurors first in individual sequestered voir dire or by allowing the prosecutor to use leading questions during voir dire. Davis v. State, 660 So. 2d 1228, 1995 Miss. LEXIS 287 (Miss. 1995), cert. denied, 517 U.S. 1192, 116 S. Ct. 1684, 134 L. Ed. 2d 785, 1996 U.S. LEXIS 3101 (U.S. 1996).

A trial court in a capital murder prosecution did not abuse its discretion by refusing to grant the defendant's motion for individual sequestered voir dire of the entire venire where the court asked the collective venire about the effect of pretrial publicity or information received about the case, and the court later asked if there was any reason that a juror felt that he or she could not be fair and impartial, and anyone who responded affirmatively was questioned individually in chambers. Carr v. State, 655 So. 2d 824, 1995 Miss.

LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

United States Supreme Court has found that, in civil case, use of peremptory challenge based on race violates Fifth Amendment; however, where at time of trial Fifth Circuit operated under rule that such holding did not apply to civil trials, failure to object on voir dire to counsel's use of challenge against black prospective juror foreclosed post trial objection. Dawson v. Wal-Mart Stores, Inc., 781 F. Supp. 1166, 1992 U.S. Dist. LEXIS 387 (N.D. Miss.), aff'd, 978 F.2d 205, 1992 U.S. App. LEXIS 31059 (5th Cir. Miss. 1992).

Batson claim of racial discrimination in exercise of peremptory challenge to juror requires 3-step process: party claiming discrimination must make prima facie showing that challenge was on basis of race; burden then shifts to striking party to articulate race-neutral explanation; and ultimately trial court must determine whether claimant has proven purposeful discrimination. Moore v. Keller Industries, Inc., 948 F.2d 199, 1991 U.S. App. LEXIS 28882 (5th Cir. Miss. 1991), cert. denied, 504 U.S. 912, 112 S. Ct. 1945, 118 L. Ed. 2d 550, 1992 U.S. LEXIS 2754 (U.S. 1992).

In determining peremptory challenge was unlawfully exercised on racial grounds in contravention of Batson, District Court has discretion to fashion procedure necessary to evaluate counsel's race-neutral explanation; trial court's decision on ultimate question of discriminatory intent is finding of fact usually accorded great deference on appeal, because of inherent credibility assessment. Moore v. Keller Industries, Inc., 948 F.2d 199, 1991 U.S. App. LEXIS 28882 (5th Cir. Miss. 1991), cert. denied, 504 U.S. 912, 112 S. Ct. 1945, 118 L. Ed. 2d 550, 1992 U.S. LEXIS 2754 (U.S. 1992).

In determining race-neutrality for purposes of assessing peremptory challenge to jurors, neutral explanation being one "based upon something other than race of juror," legitimate reasons undergirding court's allowing trial counsel to exercise challenge relying upon counsel's intuitive assumptions, include age, appearance, familial relationships, responsiveness to questions, and background knowledge that raised possibility of bias; explanation "need not be quantifiable" provided the intent is not race-based. Moore v. Keller Industries, Inc., 948 F.2d 199, 1991 U.S. App. LEXIS 28882 (5th Cir. Miss. 1991), cert. denied, 504 U.S. 912, 112 S. Ct. 1945, 118 L. Ed. 2d 550, 1992 U.S. LEXIS 2754 (U.S. 1992).

Disproportionate exclusion from jury of members of certain race, while not itself prohibited, may nevertheless constitute evidence that counsel's stated reason for exercising challenge was mere pretext for racial discrimination. Moore v. Keller Industries, Inc., 948 F.2d 199, 1991 U.S. App. LEXIS 28882 (5th Cir. Miss. 1991), cert. denied, 504 U.S. 912, 112 S. Ct. 1945, 118 L. Ed. 2d 550, 1992 U.S. LEXIS 2754 (U.S. 1992).

Fact that counsel did not use third peremptory challenge against black prospective juror substantially supports finding that counsel did not exercise discrimination in using challenges against other 2 black prospective jurors. Moore v. Keller Industries, Inc., 948 F.2d 199, 1991 U.S. App. LEXIS 28882 (5th Cir. Miss. 1991), cert. denied, 504 U.S. 912, 112 S. Ct. 1945, 118 L. Ed. 2d 550, 1992 U.S. LEXIS 2754 (U.S. 1992).

On particular facts of case, articulated race-neutral reasons for exercising peremptory challenge to strike 2 black prospective jurors in diversity suit arising out of automobile accident were not pretextual. Moore v. Keller Industries, Inc., 948 F.2d 199, 1991 U.S. App. LEXIS 28882 (5th Cir. Miss. 1991), cert. denied, 504 U.S. 912, 112 S. Ct. 1945, 118 L. Ed. 2d 550, 1992 U.S. LEXIS 2754 (U.S. 1992).

In action against insurance company in which verdict and judgment were rendered in favor of defendant company, and plaintiffs raised claim charging that court erred in refusing to require defense counsel to indicate non-racial motive for exercising 2 of its peremptory challenges, case would be remanded to District Court to determine whether plaintiffs presented prima facie case of racial discrimination in exercise of peremptory challenges; if District Court determines such case is presented, it shall afford defendant opportunity to show challenges were made for non-racial reasons, failing which, court shall grant plaintiffs new trial. Polk v. Dixie Ins. Co., 943 F.2d 553, 1991 U.S. App. LEXIS 22127 (5th Cir. Miss. 1991).

An opening statement during voir dire is permitted as long as the attorney confines the statement to the facts expected to be proved. Woodward v. State, 533 So. 2d 418, 1988 Miss. LEXIS 492 (Miss. 1988), cert. denied, 490 U.S. 1028, 109 S. Ct. 1767, 104 L. Ed. 2d 202, 1989 U.S. LEXIS 2004 (U.S. 1989).

A defendant was not entitled to individual sequestered voir dire to allow him to individually examine jurors out of the presence of the others. White v. State, 532 So. 2d 1207, 1988 Miss. LEXIS 365 (Miss. 1988).

Trial judge did not err in failing to excuse members of jury panel who were members of defendant electric power association, where jury venire was asked and responded affirmatively that they could be fair and impartial even though they might be members of association; plaintiff did not ask for change of venue, and his attorneys chose not to exercise right to challenge juror for cause. Williams v. Dixie Electric Power Asso., 514 So. 2d 332, 1987 Miss. LEXIS 2797 (Miss. 1987).

Under this section, counsel for the defense has the right to question the jurors for cause after they have been determined to be qualified jurors on voir dire by the court, but this does not mean that he may not be required to interrogate the jurors before the state accepts the jury. Peters v. State, 314 So. 2d 724, 1975 Miss. LEXIS 1683 (Miss.), cert. denied, 423 U.S. 1019, 96 S. Ct. 457, 46 L. Ed. 2d 392, 1975 U.S. LEXIS 3639 (U.S. 1975).

Jury selection procedure provided in Circuit Court Rule 13, which requires that counsel for the defendant direct his questions on voir dire to the entire group of jurors presented, is not improper, so long as the defendant is given a fair opportunity to ask questions of individual jurors which may enable the defendant to determine his right to challenge a juror. Peters v. State, 314 So. 2d 724, 1975 Miss. LEXIS 1683 (Miss.), cert. denied, 423 U.S. 1019, 96 S. Ct. 457, 46 L. Ed. 2d 392, 1975 U.S. LEXIS 3639 (U.S. 1975).

It was within the sound discretion of the trial judge as to how many jurors would be submitted to the litigant for their voir dire. Bright v. State, 293 So. 2d 818, 1974 Miss. LEXIS 1814 (Miss. 1974).

District attorney has right to examine jurors after trial judge has satisfied himself as to competency of panel. Phenizee v. State, 180 Miss. 746, 178 So. 579, 1938 Miss. LEXIS 39 (Miss. 1938).

To allow attorneys in a case to examine jurors does not deprive the court of its inherent power. House v. State, 133 Miss. 675, 98 So. 156, 1923 Miss. LEXIS 183 (Miss. 1923).

A denial of the right under this section [Code 1942, § 1802] is reversible error. Jones v. State, 133 Miss. 684, 98 So. 150, 1923 Miss. LEXIS 182 (Miss. 1923).

3. Examination as to particular matters.

New trial was not warranted because defendant failed to show that the juror had substantial knowledge of his relationship with the prosecution's witness, which was that of the brother of the prosecution witness's great uncle by marriage. Walker v. State, 121 So. 3d 320, 2013 Miss. App. LEXIS 579 (Miss. Ct. App. 2013).

Defendant's conviction for manslaughter was appropriate because he had, or should have had, actual knowledge that a juror was untruthful during voir dire in regard to knowing defendant's mother, yet, defendant remained silent; further, the trial court clearly found that defendant's mother's affidavit lacked credibility. Lindsey v. State, 965 So. 2d 712, 2007 Miss. App. LEXIS 357 (Miss. Ct. App. 2007).

Where defendant's first trial resulted in a mistrial based on a Batson challenge, because the jury had not been sworn, the rules prohibiting double jeopardy were not violated; double jeopardy protection did not attach to defendant's first proceeding, so as to preclude a second trial. Gaskin v. State, 856 So. 2d 363, 2003 Miss. App. LEXIS 164 (Miss. Ct. App. 2003).

Prosecutor's question to prospective jurors during voir dire asking whether they would be influenced by fact that thirty years had passed between murder and current trial was appropriate to determine whether any jurors were predisposed to finding defendant not guilty simply due to passage of such length of time. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

It is perfectly proper for counsel to ask questions during voir dire that are beyond court's inquiries reasonably necessary to assure himself and court that jurors selected will give his client benefit of every right to which he is entitled under the law, as well as to reveal or signify particular antipathies that could prejudice his client before any proposed juror. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Prosecutor's question to potential jurors asking whether they could conceive of imposing death penalty in murder case with no eyewitness was proper means of probing into their prejudices to get insight into their thoughts. Taylor v. State, 672 So. 2d 1246, 1996 Miss. LEXIS 193 (Miss.), cert. denied, 519 U.S. 994, 117 S. Ct. 486, 136 L. Ed. 2d 379, 1996 U.S. LEXIS 7020 (U.S. 1996).

Trial court's questioning and dismissal of 6 venire members who expressed opposition to the death penalty was adequate, even though defense counsel was not allowed to repeat questions in his own words to prospective jurors during court's voir dire, where trial court rephrased questions as requested, defense did not request permission to ask further questions, and there was no showing that further questioning would have rehabilitated dismissed venire members. Jackson v. State, 672 So. 2d 468, 1996 Miss. LEXIS 718 (Miss. 1996).

Defense counsel's extensive voir dire of venire members regarding attitudes toward death penalty precluded claim on appeal that trial court's inadequate voir dire questioning permitted seating of jurors with bias in favor of death penalty. Jackson v. State, 672 So. 2d 468, 1996 Miss. LEXIS 718 (Miss. 1996).

Circuit court should take substantial role in conducting voir dire to determine whether prospective jurors would vote automatically for death penalty regardless of aggravating and mitigating circumstances. Ballenger v. State, 667 So. 2d 1242, 1995 Miss. LEXIS 451 (Miss. 1995), cert. denied, 518 U.S. 1025, 116 S. Ct. 2565, 135 L. Ed. 2d 1082, 1996 U.S. LEXIS 4177 (U.S. 1996).

Trial court erred by refusing to allow medical malpractice plaintiff to ask questions during voir dire to determine if prospective jurors had been exposed to and/or affected by media campaign on tort reform; however, error was harmless, as advertisements in question were geared towards reducing amount of damages and did not suggest that jurors should find defendants not liable, and plaintiff was allowed to ask jurors whether they belonged to any tort reform group, whether they had personal feelings that there were too many lawsuits, whether they felt medical doctors should not be sued, and whether they should give large damages if they were justified by proof. Tighe v. Crosthwait, 665 So. 2d 1337, 1995 Miss. LEXIS 500 (Miss. 1995).

A prosecutor's request of jurors during individual voir dire to give the particular circumstances that each would require in order to return a death sentence were not improperly designed to extract a promise from the jurors that they would certainly vote in favor of the death penalty given a specific set of circumstances, and therefore did not violate the defendant's constitutional rights. Foster v. State, 639 So. 2d 1263, 1994 Miss. LEXIS 670 (Miss. 1994), cert. denied, 514 U.S. 1019, 115 S. Ct. 1365, 131 L. Ed. 2d 221, 1995 U.S. LEXIS 2061 (U.S. 1995).

Personal opposition to capital punishment is not a constitutional impediment to juror service so long as the juror is able to set aside his or her personal belief and fairly consider all sentencing options under the law; it was therefore error for a trial court to refuse defense counsel an opportunity to further voir dire potential jurors who had expressed reluctance to vote for the death penalty. Balfour v. State, 598 So. 2d 731, 1992 Miss. LEXIS 131 (Miss. 1992).

In civil jury trial in Federal District Court, equal protection component of

Fifth Amendment due process clause prohibits private litigant from using peremptory challenge to exclude prospective jurors on account of race because such race-based exclusion violates equal protection rights of excluded jurors; opposing litigant has third-party standing to raise excluded jurors' rights in opposing litigant's own behalf; and, while role of litigants in determining jury's composition may provide one reason for wide acceptance of jury system and its verdicts, if race stereotypes are price for acceptance of jury panel, price is too high to meet standard of constitution. Edmonson v. Leesville Concrete Co., 500 U.S. 614, 111 S. Ct. 2077, 114 L. Ed. 2d 660, 1991 U.S. LEXIS 3023 (U.S. 1991).

Prospective jurors in a capital murder prosecution who had stated their opposition to the death penalty were improperly excluded without allowing the defense counsel the opportunity to question them. However, this error was harmless beyond a reasonable doubt where the answers the jurors gave were substantially clear, it was reasonably certain that the jurors were "Witherspoon-excludable," and it was unlikely that voir dire examination by the defense counsel would have rehabilitated the jurors sufficient to take them out of Witherspoon. Hansen v. State, 592 So. 2d 114, 1991 Miss. LEXIS 876 (Miss. 1991), cert. denied, 504 U.S. 921, 112 S. Ct. 1970, 118 L. Ed. 2d 570, 1992 U.S. LEXIS 2882 (U.S. 1992).

A defendant was not denied his right to use a peremptory challenge on a juror who failed to answer the defense attorney's question during voir dire as to whether any of the jurors knew either attorney in the case, even though the juror had been injured when the defense attorney collided with him during a softball game 3 years earlier, where the juror did not recognize the defense attorney at the time of voir dire and only sometime thereafter recognized him as being the person who had collided with him at the ball game, the juror had not seen the defense attorney since that time, and the juror said that he felt no ill will toward the attorney for the injury he received and that the incident did not color his judgments during trial. Bush v. State, 585 So. 2d 1262, 1991 Miss. LEXIS 589 (Miss. 1991).

A juror's failure to respond to a voir dire question asking whether any of the potential jurors were related by blood or marriage to the victim was proper, where the juror was the aunt of a man who had at one time lived with the victim and had 2 children with the victim, but had never been married to the victim. Lewis v. State, 580 So. 2d 1279, 1991 Miss. LEXIS 314 (Miss. 1991).

Although an attorney may probe the prejudices of prospective jurors to the end that all will understand the juror's thoughts on matters directly related to the issues to be tried, it is impermissible for an attorney to attempt to secure from the juror a pledge that, if a certain set of facts occur or are presented, the juror will vote a certain way. There may well be other facts which would require a conscientious juror to do otherwise even though the assumed hypothetical fact comes to pass. Furthermore, in the course of deliberation a juror should be encumbered by his or her oath, the evidence and the instructions from the trial court, and nothing more. Baker v. Baker, 553 So. 2d 8, 1989 Miss. LEXIS 537 (Miss. 1989).

In a capital murder prosecution, the court's failure to excuse for cause a potential juror who stated during voir dire that in order for him not to impose the death penalty the defendant would have to prove beyond a reasonable doubt that he should not be executed, was not reversible error where defense counsel used his twelfth peremptory challenge to remove the juror, defense counsel had not exhausted his peremptory challenges and did not challenge anyone else for cause or ask for more peremptory challenges. Minnick v. State, 551 So. 2d 77, 1988 Miss. LEXIS 612 (Miss. 1988), rev'd, 498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489, 1990 U.S. LEXIS 6118 (U.S. 1990), overruled, Willie v. State, 585 So. 2d 660, 1991 Miss. LEXIS 454 (Miss. 1991).

A trial judge properly sustained the state's objections to a defense counsel's voir dire questions which particularized what the facts would show and then asked the jurors if they would return a verdict of not guilty. Harris v. State, 532 So. 2d 602, 1988 Miss. LEXIS 502 (Miss. 1988).

A potential juror, who is a member or customer of a co-operative electrical power association, is not per se disqualified from sitting as a juror in a lawsuit to which the co-operative is a party. Garcia v. Coast Elec. Power Ass'n, 493 So. 2d 380, 1986 Miss. LEXIS 2576 (Miss. 1986).

When asked on voir dire examination whether any juror had a close relative who was involved in law enforcement, the failure of one juror to disclose that his brother was one of the police officers who was involved in the investigation of the burglary being prosecuted gave rise to a reasonable inference of prejudice to the defendant in selecting the jury. Odom v. State, 355 So. 2d 1381, 1978 Miss. LEXIS 2006 (Miss. 1978).

Where the prosecution, on voir dire, asked a prospective juror in effect if he would return a verdict of guilty if the state should prove that the prosecutrix was a female child under the age of 12 and that the defendant attempted forcibly to have carnal knowledge of her and that her body was thereby torn or lacerated, and the question was not objected to by the defendant, the question was harmless or was waived by the defendant's failure to object, and its allowance not an abuse of discretion, particularly in view of later proper instructions defining the crime. South Mississippi Electric Power Ass'n v. Pryor, 246 So. 2d 920, 1971 Miss. LEXIS 1431 (Miss. 1971).

The statutory scheme embodied in Code 1942, §§ 1202, 1803, 1832, 1839, 2435, 2535, and 3915 clearly embraces sufficient safeguards for fair jury trials in justice of the peace courts, composed of a fair cross-section of the citizens of the community, completely without regard to race or sex, and the justice must conform his judgment to the verdict of such a jury. Shaffer v. Bridges, 295 F. Supp. 869, 1969 U.S. Dist. LEXIS 8348 (S.D. Miss. 1969), dismissed, Hall v. Baum, 397 U.S. 93, 90 S. Ct. 818, 25 L. Ed. 2d 79, 1970 U.S. LEXIS 2741 (U.S. 1970), dismissed, 397 U.S. 94, 90 S. Ct. 818, 25 L. Ed. 2d 80, 1970 U.S. LEXIS 2742 (U.S. 1970).

Where funds to pay special prosecutor, in prosecution for murder, were raised by public subscription, court stated it would have been better to grant defendant's request for list of contributors to aid in selection of jury, but added it was not reversible error to refuse since each prospective juror could have been asked if he had contributed. Seals v. State, 208 Miss. 236, 44 So. 2d 61, 1950 Miss. LEXIS 242 (Miss. 1950).

In a capital case, trial judge must ask every juror tendered on trial panel whether he has any conscientious scruples against infliction of capital punishment and must exclude any juror who has such scruples. Phenizee v. State, 180 Miss. 746, 178 So. 579, 1938 Miss. LEXIS 39 (Miss. 1938).

If the juror has not understood meaning of question as to "conscientious scruples" against capital punishment, trial judge should explain it to him in simple form by asking whether juror is opposed to hanging, etc. Phenizee v. State, 180 Miss. 746, 178 So. 579, 1938 Miss. LEXIS 39 (Miss. 1938).

District attorney may examine jurors as to "conscientious scruples" against death penalty, although jury has passed judge's examination. Phenizee v. State, 180 Miss. 746, 178 So. 579, 1938 Miss. LEXIS 39 (Miss. 1938).

District attorney's examination as to "conscientious scruples" against death penalty should be in the abstract and must not go to extent of forcing a committal with respect to what juror or jury would do in the particular case, nor should examination create impression juror would be looked upon with displeasure unless he returned death verdict. Phenizee v. State, 180 Miss. 746, 178 So. 579, 1938 Miss. LEXIS 39 (Miss. 1938).

District attorney's statements to jury on voir dire that state was going to ask death penalty, and anyone opposed to death penalty would be excused, held erroneous, but error was cured by statements of trial judge and district attorney that it was for jury to say whether capital punishment should be inflicted, and by instruction for state that if guilty verdict was returned, jury could fix punishment at death or life imprisonment. Phenizee v. State, 180 Miss. 746, 178 So. 579, 1938 Miss. LEXIS 39 (Miss. 1938).

Error, if any, in sustaining objection to question to jurors, on voir dire examination held not to warrant reversal, where question was in form of statement of principle of law. Roney v. State, 167 Miss. 532, 142 So. 475, 1932 Miss. LEXIS 196 (Miss. 1932).

Sustaining objection to question pertaining to reasonable doubt in mind of any one juror was not error. Roney v. State, 167 Miss. 532, 142 So. 475, 1932 Miss. LEXIS 196 (Miss. 1932).

RESEARCH REFERENCES

ALR.

Questions to jurors in personal injury or death action as to interest in, or connection with, indemnity insurance company. 4 A.L.R.2d 761.

Racial, religious, economic, social, or political prejudice of proposed juror as proper subject of inquiry or ground of challenge on voir dire in criminal case. 54 A.L.R.2d 1204.

Juror's false or erroneous answer on voir dire as to previous claims or actions against himself or family. 63 A.L.R.2d 1061.

Professional or business relations between proposed juror and attorney as ground for challenge for cause. 72 A.L.R.2d 673.

Racial, religious, economic, social, or political prejudice of proposed juror as proper subject of inquiry or ground of challenge on voir dire in civil case. 72 A.L.R.2d 905.

Right of counsel in criminal case personally to conduct voir dire examination of prospective jurors. 73 A.L.R.2d 1187.

Propriety and effect of asking prospective jurors hypothetical questions, on voir dire, as to how they would decide issues of case. 99 A.L.R.2d 7.

Propriety, on voir dire in criminal case, of inquiries as to juror's possible prejudice if informed of defendant's prior convictions. 43 A.L.R.3d 1081.

Jury: membership in racially biased or prejudiced organization as proper subject of voir dire inquiry or ground for challenge. 63 A.L.R.3d 1052.

Juror's voir dire denial or nondisclosure of acquaintance or relationship with attorney in case, or with partner or associate of such attorney, as ground for new trial or mistrial. 64 A.L.R.3d 126.

Competency of juror as affected by his membership in co-operative association interested in the case. 69 A.L.R.3d 1296.

Religious belief, affiliation, or prejudice of prospective juror as proper subject of inquiry or ground for challenge on voir dire. 95 A.L.R.3d 172.

Validity of jury selection as affected by accused's absence from conducting of procedures for selection and impaneling of final jury panel for specific cases. 33 A.L.R.4th 429.

Effect of juror's false or erroneous answer on voir dire in personal injury or death action as to previous claims or actions for damages by himself or his family. 38 A.L.R.4th 267.

Cure of prejudice resulting from statement by prospective juror during voir dire, in presence of other prospective jurors, as to defendant's guilt. 50 A.L.R.4th 969.

Professional or business relations between proposed juror and attorney as ground for challenge for cause. 52 A.L.R.4th 964.

Effect of juror's false or erroneous answer on voir dire regarding previous claims or actions against himself or his family. 66 A.L.R.4th 509.

Counsel's argument or comment stating or implying that defendant is not insured and will have to pay verdict himself as prejudicial error. 68 A.L.R.4th 954.

Prejudicial effect of bringing to jury's attention fact that plaintiff in personal injury or death action is entitled to workers' compensation benefits. 69 A.L.R.4th 131.

Propriety and prejudicial effect of trial counsel's reference or suggestion in medical malpractice case that defendant is insured. 71 A.L.R.4th 1025.

Prospective juror's connection with insurance company as ground for challenge for cause. 9 A.L.R.5th 102.

Am. Jur.

Note, Beyond Batson: eliminating gender-based peremptory challenges. 105 Harv L Rev 1920, June 1992.

47 Am. Jur. 2d, Jury §§ 150 et seq.

8 Am. Jur. Pl & Pr Forms (Rev), Criminal Procedure, Form 264 (challenge to panel of jurors).

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Form 141(request that court examine panel on voir dire with respect to certain matters); Forms 171-186 (challenges to poll).

2 Am. Jur. Proof of Facts, Bias or Prejudice, Proof No. 1 (bias or prejudice of juror).

20 Am. Jur. Proof of Facts, Religious Prejudice, § 32 (proof of prejudice of prospective juror – trial of a challenge on voir dire).

5 Am. Jur. Trials, Selecting the jury, §§ 1 et seq.

CJS.

50 C.J.S., Juries §§ 215, 238, 352, 367, 371, 424, et seq.

Lawyers' Edition.

Effect of accused's federal constitutional rights on scope of voir dire examination of prospective jurors – Supreme Court cases. 114 L. Ed. 2d 763.

Law Reviews.

1978 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 59, March 1979.

§ 13-5-71. Oath of petit jurors.

Petit jurors shall be sworn in the following form:

"You, and each of you, do solemnly swear (or affirm) that you will well and truly try all issues and execute all writs of inquiry that may be submitted to you, or left to your decision by the court, during the present term, and true verdicts give according to the evidence. So help you God."

The oath shall authorize the jury to try all issues and execute all writs of inquiry which may be submitted to it during that term of the court. Talesmen, if any be summoned or retained, shall in like manner be sworn to try all issues and execute all writs of inquiry which may be submitted to them during the day for which they are summoned or the time for which they are retained.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 1 (132); 1857, ch. 61, art. 143; 1871, § 744; 1880, § 1697; 1892, § 2384; 1906, § 2713; Hemingway's 1917, § 2206; 1930, § 2059; 1942, § 1793.

Cross References — Oath of jurors serving in special court of eminent domain, see § 11-27-17.

Oath of jurors in capital case, see § 13-5-73.

Petit juror compensation, see § 25-7-61.

JUDICIAL DECISIONS

ANALYSIS

1. Oath, necessity and sufficiency of.
2. —Capital cases.
3. Swearing jurors after commencement of trial.
4. Disability of juror.

1. Oath, necessity and sufficiency of.

Defendant argued that a trial judge failed to swear in a jury during defendant's trial for kidnapping, sexual battery, and aggravated assault; however, while the record did not explicitly reflect a reading of the oath, the record did include references to the oath. The trial judge was presumed to have performed his duties. Moore v. State, 996 So. 2d 756, 2008 Miss. LEXIS 601 (Miss. 2008).

There was no plain error because defendant did not overcome the presumption that the jury was sworn since the sole mention in the record of the administration of the oath reflected that the jury was sworn, counsel never objected to a failure to swear the jury, and counsel did not object to the giving of a jury instruction that acknowledged that the jury was sworn. Holbrook v. State, 4 So. 3d 382, 2008 Miss. App. LEXIS 573 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 115 (Miss. 2009).

Transcript did not indicate the actual giving of the oath under Miss. Code Ann. § 13-5-71, but the cover page of the transcript stated that the jury was duly impaneled and an instruction stated that the jury took an oath, and defendant's assertion that the jury was not properly sworn was insufficient to overcome the established presumption that the trial court properly performed its duties; however, because this issue causes concern to members of court, the court urges the lower courts to place in every official record evidence that the trial jury took the official oath to well and truly try the issues. Wilson v. State, 990 So. 2d 798, 2008 Miss. App. LEXIS 572 (Miss. Ct. App. 2008).

Although the trial court administered an oath different than that mandated by the Legislature, defendant failed to raise a contemporaneous objection; because the trial judge did not have an opportunity to pass on the question, this issue was not preserved for appellate review. Debrow v. State, 972 So. 2d 550, 2007 Miss. LEXIS 647 (Miss. 2007).

In a drug case, defendant did not receive ineffective assistance of counsel because (1) he offered no evidence to rebut the presumption that the jury had been properly sworn, so no objection by counsel was required; (2) defense counsel was not required to request an instruction regarding an accomplice because the State's evidence did not rest upon the testimony of two others involved; (3) defense counsel's failure to request an additional instruction when mention was made of defendant's prior incarceration was not deficient where an objection was made immediately and a curative instruction was given; and (4) the failure to object to defendant's criminal record was not deficient since the testimony of a correctional department custodian was permissible to authenticate such under Miss. R. Evid. 901. Vardaman v. State, 966 So. 2d 885, 2007 Miss. App. LEXIS 706 (Miss. Ct. App. 2007).

In a prosecution of defendant for exploitation of a minor, defendant's assertion that the petit jury was not properly sworn as required by Miss. Code Ann. § 13-5-71 was insufficient to overcome the established presumption that the trial court properly performed its duties. Allen v. State, 945 So. 2d 422, 2006 Miss. App. LEXIS 677 (Miss. Ct. App. 2006).

In a drug case, defendant failed to present sufficient evidence to overcome the presumption that the trial judge administered the oath to the jury because, although the record did not explicitly reflect a reading of the oath, the record did reveal references made by the court to the oath; furthermore, the court's judgment of conviction stated that "a trial before a jury has been duly sworn," and therefore it could be presumed that the jury was sworn. Carlisle v. State, 936 So. 2d 415, 2006 Miss. App. LEXIS 481 (Miss. Ct. App. 2006).

Court rejected defendant's claim that his conviction for felony shoplifting should be reversed due to the lack of evidence in the record that the petit jury was sworn in as required by Miss. Code Ann. § 13-5-71 because the record did not indicate that the jury was not sworn and there was no objection by trial counsel to the failure to administer the oath. The sole mention of the oath in the record indicated that the oath was administered. Biggs v. State, 942 So. 2d 185, 2006 Miss. App. LEXIS 1 (Miss. Ct. App.), cert. denied, 942 So. 2d 164, 2006 Miss. LEXIS 715 (Miss. 2006).

Defendant did not present evidence sufficient to overcome the presumption that the judge properly performed his duties by placing the jury under oath where a boilerplate warning was present and there were references throughout the record by the judge, prosecutor, and even defense counsel to an oath being given. Lawrence v. State, 928 So. 2d 894, 2005 Miss. App. LEXIS 745 (Miss. Ct. App. 2005).

Defendant's conviction for three counts of armed robbery was proper where the failure to administer a second oath to the jurors, as set out in Miss. Code Ann. § 13-5-73, was not reversible error; the oath administered under Miss. Code Ann. § 13-5-71 was sufficient. Boggans v. State, 867 So. 2d 279, 2004 Miss. App. LEXIS 190 (Miss. Ct. App. 2004).

Recital in the judgment and sentence that the jury was specially sworn is conclusive of the fact. Ratcliff v. State, 201 Miss. 259, 29 So. 2d 321, 1947 Miss. LEXIS 396 (Miss. 1947).

In the absence of evidence to the contrary, it will be presumed that the jury were sworn. Waddell v. Magee, 53 Miss. 687, 1876 Miss. LEXIS 134 (Miss. 1876).

If the record recite that the jury were "impaneled and sworn to sit as jurors in the case," it will be presumed that they were legally sworn. Furniss v. Meredith, 43 Miss. 302, 1870 Miss. LEXIS 39 (Miss. 1870).

Where the jury appeared to have been sworn "truly to try the issue joined between the parties," it was held sufficient. Windham v. Williams, 27 Miss. 313, 1854 Miss. LEXIS 51 (Miss. 1854).

It is not necessary to swear the jury for the week in each case, and talesmen will be presumed to have been duly sworn unless the record shows the contrary. Pierce v. Tate, 27 Miss. 283, 1854 Miss. LEXIS 45 (Miss. 1854).

2. —Capital cases.

Pursuant to Miss. Code Ann. § 13-5-73, jurors in a capital case should be sworn to well and truly try the issue between the state and the prisoner, and a true verdict should be given according to the evidence and law, and because the crime of forcible rape was a capital crime under Miss. Code Ann. § 97-3-65(4)(a), defendant was entitled to have the capital oath administered to the jurors, but the trial judge failed to administer that oath; however, the capital oath given in the middle of the trial, together with the petit oath given at the beginning of defendant's trial, which were substantially the same, were sufficient to instruct the jury of their duty. Golden v. State, 968 So. 2d 378, 2007 Miss. LEXIS 530 (Miss. 2007), cert. dismissed, 977 So. 2d 343, 2008 Miss. LEXIS 111 (Miss. 2008).

In a prosecution for forcible rape of a female adult, the failure to administer to the jury the special oath in capital cases required by § 13-5-73 was not error where the jury received the oath of petit jurors prescribed by § 13-5-71 which is substantially equivalent to the special oath, the defendant refused any attempt by the trial judge to cure the omission, the defendant was not taxed by the jury with the maximum sentence of life imprisonment, and a special venire was neither requested nor empaneled in the trial of the case, but rather the jury was selected and accepted from the regular panel for the week. Wilburn v. State, 608 So. 2d 702, 1992 Miss. LEXIS 677 (Miss. 1992).

Defendants charged with capital offenses are entitled to have the jury trying them impaneled and specially sworn as the law directs. Miller v. State, 122 Miss. 19, 84 So. 161, 1920 Miss. LEXIS 415 (Miss. 1920).

The voir dire oath is not sufficient in a capital case. Miller v. State, 122 Miss. 19, 84 So. 161, 1920 Miss. LEXIS 415 (Miss. 1920).

3. Swearing jurors after commencement of trial.

Defendant failed to present sufficient evidence to overcome the presumption that the trial judge administered the oath to the jury. Although the record did not expressly reflect a reading of the oath, the record did reveal, however, that the trial court made two references to an oath during trial; the appellate court had to presume that the trial judge properly performed his duties, and it failed to find reversible error or harm that would have warranted a reversal of defendant's conviction under the plain error doctrine. Acreman v. State, 907 So. 2d 1005, 2005 Miss. App. LEXIS 276 (Miss. Ct. App. 2005).

An instance where the oath was administered in a felony case over the objection of the defendant after the state had closed its evidence and the error held to be harmless. Stark v. State, 133 Miss. 275, 97 So. 577, 1923 Miss. LEXIS 136 (Miss. 1923).

A failure to swear seven tales jurors until the case was closed will not vitiate a verdict of guilty unless the defendant was prejudiced thereby. Boroum v. State, 105 Miss. 887, 63 So. 297, 1913 Miss. LEXIS 272 (Miss. 1913).

4. Disability of juror.

If on the trial of a case a juror should become insane the court should begin the trial de novo, and the defendant should have the whole jury, as reconstituted for new trial, tendered to him, with the right to exercise all his challenges given him by law. Dennis v. State, 96 Miss. 96, 50 So. 499, 1909 Miss. LEXIS 23 (Miss. 1909).

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d, Jury §§ 168 et seq.

CJS.
50 C.J.S., Juries §§ 520 et seq.

Law Reviews.
1978 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 59, March 1979.

§ 13-5-73. Oath of jurors and bailiffs in capital cases.

The jurors in a capital case shall be sworn to "well and truly try the issue between the state and the prisoner, and a true verdict give according to the evidence and the law." Bailiffs may be specially sworn by the court, or under its direction, to attend on such jury and perform such duties as the court may prescribe for them.

HISTORY: Codes, 1880, § 3060; 1892, § 1410; 1906, § 1483; Hemingway's 1917, § 1241; 1930, § 1264; 1942, § 2507.

JUDICIAL DECISIONS

1. In general.

Pursuant to Miss. Code Ann. § 13-5-73, jurors in a capital case should be sworn to well and truly try the issue between the state and the prisoner, and a true verdict should be given according to the evidence and law, and because the crime of forcible rape was a capital crime under Miss. Code Ann. § 97-3-65(4)(a), defendant was entitled to have the capital oath administered to the jurors, but the trial judge failed to administer that oath; however, the capital oath given in the middle of the trial, together with the petit oath given at the beginning of defendant's trial, which were substantially the same, were sufficient to instruct the jury of their duty. Golden v. State, 968 So. 2d 378, 2007 Miss. LEXIS 530 (Miss. 2007), cert. dismissed, 977 So. 2d 343, 2008 Miss. LEXIS 111 (Miss. 2008).

In a capital murder case, excusing a juror who was ambivalent as to whether she could impose the death penalty was proper and reflected the public policy set forth in Miss. Code Ann. § 13-5-73. Dycus v. State, 875 So. 2d 140, 2004 Miss. LEXIS 366 (Miss. 2004), vacated, 544 U.S. 901, 125 S. Ct. 1589, 161 L. Ed. 2d 271, 2005 U.S. LEXIS 2212 (U.S. 2005).

Defendant's conviction for three counts of armed robbery was proper where the failure to administer a second oath to the jurors, as set out in Miss. Code Ann. § 13-5-73, was not reversible error; the oath administered under Miss. Code Ann. § 13-5-71 was sufficient. Boggans v. State, 867 So. 2d 279, 2004 Miss. App. LEXIS 190 (Miss. Ct. App. 2004).

Trial court in county where venue in murder prosecution was transferred following jury selection had jurisdiction to re-administer oath to jurors before trial, following administration of oath in county of jury selection that did not conform to special statutory requirements for oaths in capital cases. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Fact that bailiffs accompanied jurors to their respective homes after jurors were administered improper oath, but before re-administration of correct oath the following day was not prejudicial error in capital murder prosecution. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525

U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

In a prosecution for forcible rape of a female adult, the failure to administer to the jury the special oath in capital cases required by § 13-5-73 was not error where the jury received the oath of petit jurors prescribed by § 13-5-71 which is substantially equivalent to the special oath, the defendant refused any attempt by the trial judge to cure the omission, the defendant was not taxed by the jury with the maximum sentence of life imprisonment, and a special venire was neither requested nor empaneled in the trial of the case, but rather the jury was selected and accepted from the regular panel for the week. Wilburn v. State, 608 So. 2d 702, 1992 Miss. LEXIS 677 (Miss. 1992).

Although the beginning of the record did not indicate whether or not the jury was specially sworn as required by Miss Code § 13-5-73, the first part of the judgment indicated the jury was specially sworn prior to the introduction of evidence. Young v. State, 425 So. 2d 1022, 1983 Miss. LEXIS 2327 (Miss. 1983).

Although the record in a murder prosecution did not reflect that the jury had been specially sworn, as required by statute, such omission was not reversible error where the rebuttable presumption that the trial judge properly performed his duty had not been overcome. Bell v. State, 360 So. 2d 1206, 1978 Miss. LEXIS 2318 (Miss. 1978).

Where the trial court's failure to have the jury sworn as required by this section [Code 1972, § 13-5-73] was brought to its attention immediately after a few preliminary questions had been asked of the first witness in the case, after which the jury was sworn as required by law and the few questions that had been asked were repeated, there was a technical error but it was harmless error and not reversible. Thomas v. State, 298 So. 2d 690, 1974 Miss. LEXIS 1560 (Miss. 1974).

That the oath administered to a jury calls for a true "and good" verdict is not reversible error. Simmons v. State, 241 Miss. 481, 130 So. 2d 860, 1961 Miss. LEXIS 366 (Miss. 1961).

By virtue of this provision, in capital cases the accused is entitled to have the jury sworn specially. Miller v. State, 122 Miss. 19, 84 So. 161, 1920 Miss. LEXIS 415 (Miss. 1920).

The failure of the court to specially swear a jury in a capital case is waived where no objection is made thereto by the defendant until after a verdict against him. Hill v. State, 112 Miss. 375, 73 So. 66, 1916 Miss. LEXIS 121 (Miss. 1916).

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Jury §§ 168 et seq.

CJS.

50 C.J.S., Juries §§ 520 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 59, March 1979.

§ 13-5-75. Repealed.

Repealed by Laws of 1974, ch. 378, § 11.

[Codes, Hutchinson's 1848, ch. 61, art. 10 (2); 1857, ch. 61, art. 141; 1871, § 742; 1880, § 1693; 1892, § 2385; 1906, § 2714; Hemingway's 1917, § 2207; 1930, § 2060; 1942, § 1794; Laws, 1938, ch. 304]

Editor's Notes — Former § 13-5-75 specified when the circuit court was to order jurors drawn and summoned.

§ 13-5-77. Special venire facias to issue in certain criminal cases.

When any person charged with a capital crime, or with the crime of manslaughter, shall have been arraigned and the plea of not guilty entered, the accused or the district attorney in any such case shall, upon demand, be entitled to a special venire. If at a term of court a special venire has been demanded for any case or cases, it shall be the duty of the court to cause to be drawn, in open court, from the jury box as many names as the judge in his discretion may direct, not to be less than forty (40) for each special venire as the judge in his discretion may direct to be called, and it shall be the duty of the clerk to issue a special venire facias, commanding the sheriff to summon the persons whose names are so drawn, to attend the court on a particular day to be named in the writ. It shall not be necessary that a separate special venire be drawn for each case in which a special venire is demanded. Those persons summoned pursuant to the issuance of a special venire facias shall attend the court on the day named in the writ and shall serve as the court may direct on any case for which a special venire has been demanded; provided, however, no juror summoned as a special venireman shall be impaneled or serve on more than one (1) case. In the event a special venire be exhausted in a case without a jury being impaneled from those summoned and in attendance, the court shall proceed to make up the jury for the trial of the case from the regular panel and tales jurors who may have been summoned for the day. If, after exhausting said regular panel and tales jurors, a competent jury be not obtained, the court shall direct the sheriff to summon forthwith as many tales jurors as shall be sufficient to complete the jury.

In the event that there should be no such box, or the same should be mislaid, or the names therein have been exhausted, then the court may order a special venire facias to be issued by the clerk, directing the sheriff to summon as many jurors as may be necessary, not less than forty (40) for each special venire as the judge in his discretion may direct to be called and, after exhausting a special venire in any case, to impanel the jury as hereinbefore directed. The slips containing the names of all jurors drawn or summoned on a special venire, and not impaneled on a jury, shall be returned to the box from which they were drawn immediately after a jury shall be impaneled. If a special venire be not demanded, the jury in each case shall be composed of the regular venire for the week and as many talesmen and bystanders as may be required, to be summoned under the order of the court.

HISTORY: Codes, Hutchinson's 1848, ch. 65, art. 7 (1); 1857, ch. 64, art. 295; 1871, § 2759; 1880, § 3058; 1892, § 2386; 1906, § 2715; Hemingway's 1917, § 2208; 1930, § 2061; 1942, § 1795; Laws, 1985, ch. 443, § 1, eff from and after July 1, 1985.

Cross References — Criminal defendant's right to jury trial in case before a justice of the peace, see § 99-33-9.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Special venire.
3. Time for requesting special venire.
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6. —Summoning venire.
7. —Number of persons.
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10. Discharge of venireman.
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1. In general.

Supreme Court will not overrule lower court's denial of motion for special venire except upon showing of abuse of discretion. Davis v. State, 684 So. 2d 643, 1996 Miss. LEXIS 292 (Miss. 1996), cert. denied, 520 U.S. 1170, 117 S. Ct. 1437, 137 L. Ed. 2d 544, 1997 U.S. LEXIS 2295 (U.S. 1997).

In a prosecution for murder in which defendant moved for a special venire, the trial court committed reversible error where, instead of filling the panel with members of that week's regular jury panel who were in the courtroom, it presented defendant with 11 jurors who had been accepted by the State, and, over objection, required the defense to make its peremptory challenges to the 11 accepted jurors, in violation of statute mandating that in capital cases the defendant must be presented a full panel before being called upon to make his 12 peremptory challenges. Sellen v. State, 374 So. 2d 781, 1979 Miss. LEXIS 2346 (Miss. 1979).

Under this section, which permits the jurors to be impaneled from those "summoned and in attendance" under the special venire, the trial judge in an armed robbery prosecution did not err in sua sponte excusing the husband of a prospective juror named in the venire facias, where the mistake of serving the husband for jury service rather than his wife was not discovered until after the jury and an alternate juror had been accepted and impaneled, where the trial judge initially offered the defense an extra challenge as to the husband following such discovery, where the defense rejected such offer and moved for a new panel, and where the trial judge placed the alternate juror on the panel following the excusing of the husband from service. Thorne v. State, 348 So. 2d 1011, 1977 Miss. LEXIS 2113 (Miss. 1977).

Where special venire of 75 prospective jurors was called at defendant's request but was exhausted before 12 jurors were qualified and accepted by both sides, trial judge did not err in completing jury selection process by using members of regular panel. Odom v. State, 311 So. 2d 346, 1975 Miss. LEXIS 1606 (Miss. 1975).

The statutory method of selecting jurors is directory, not mandatory, and unless it is shown that the method used was fraudulent or such a radical departure from the method prescribed by the statute as to be unfair to the defendant or to prevent due process of law, the supreme court will not reverse. Armstrong v. State, 214 So. 2d 589, 1968 Miss. LEXIS 1317 (Miss. 1968), cert. denied, 395 U.S. 965, 89 S. Ct. 2109, 23 L. Ed. 2d 750, 1969 U.S. LEXIS 1312 (U.S. 1969).

The provisions of the law in regard to the listing, drawing, summoning or impaneling of juries are directory merely. Smith v. State, 242 Miss. 728, 137 So. 2d 172, 1962 Miss. LEXIS 586 (Miss. 1962).

A fairer trial was assured the defendant in a murder prosecution by the court's overruling a motion, made after the case had been called for trial and while the jury was being selected, to call additional jurors from the jury box after the regular panel and special venire had both been exhausted, leaving the defendant with only two peremptory challenges which he immediately expended, than would have been by drawing from the general jury box which was so nearly depleted that many jurors would have had to be drawn from the box of the district where the homicide occurred. Lewis v. State, 201 Miss. 48, 28 So. 2d 122, 1946 Miss. LEXIS 356 (Miss. 1946), cert. denied, 331 U.S. 785, 67 S. Ct. 1305, 91 L. Ed. 1816 (U.S. 1947).

This section [Code 1942, § 1795] is directory. Buchanan v. State, 84 Miss. 332, 36 So. 388, 1904 Miss. LEXIS 44 (Miss.

1904); McVey v. State, 117 Miss. 243, 78 So. 150, 1918 Miss. LEXIS 171 (Miss. 1918); Taylor v. State, 148 Miss. 621, 114 So. 390, 1927 Miss. LEXIS 48 (Miss. 1927).

2. Special venire.

In a manslaughter case, a trial court did not err by denying a motion for a special venire under Miss. Code Ann. § 13-5-77 because sufficient steps were taken to see that defendant received the benefits of such around the holidays; the granting of the motion would have delayed the trial for at least six months. Speagle v. State, 956 So. 2d 237, 2006 Miss. App. LEXIS 616 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 296 (Miss. 2007).

In a capital murder case, the inmate's counsel were not ineffective for removing a request for a special venire under Miss. Code Ann. § 13-5-77 because nothing in the record indicated that the jury panel was insufficient or that a special venire was necessary. Wilcher v. State, 863 So. 2d 776, 2003 Miss. LEXIS 492 (Miss. 2003), cert. denied, 542 U.S. 942, 124 S. Ct. 2917, 159 L. Ed. 2d 821, 2004 U.S. LEXIS 4678 (U.S. 2004).

Procedure for special venire is available to persons accused of certain serious crimes as matter of right, and such persons are entitled to have sheriff proceed in good faith and with due diligence to end that all persons listed upon special venire in fact be served and summoned for jury duty; it is not within sheriff's authority to decide unilaterally that there will be enough jurors at trial and make no further effort to summon unserved jurors after certain number of persons have been served. Ratliff v. State, 515 So. 2d 877, 1987 Miss. LEXIS 2874 (Miss. 1987).

Defendant in a capital murder prosecution waived his request pursuant to §§ 13-5-77 and 99-15-27 for a special venire and for a list of the veniremen so summoned, where he never objected to the failure to provide for the special venire, and where at least fifty jurors were considered prior to impaneling the twelve jurors and two alternates. Billiot v. State, 454 So. 2d 445, 1984 Miss. LEXIS 1777 (Miss. 1984), cert. denied, 469 U.S. 1230, 105 S. Ct. 1232, 84 L. Ed. 2d 369, 1985 U.S. LEXIS 171 (U.S. 1985).

The trial judge in a prosecution for capital murder complied with the requirement of § 13-5-77 in directing the clerk to draw 150 names from the jury wheel for a special venire, notwithstanding the fact that only 67 of the names drawn were statutorily qualified to serve on the special venire, where the statute required that no fewer than 40 names be drawn. Booker v. State, 449 So. 2d 209, 1984 Miss. LEXIS 1682 (Miss.), cert. denied, 469 U.S. 873, 105 S. Ct. 230, 83 L. Ed. 2d 159, 1984 U.S. LEXIS 368 (U.S. 1984).

In a prosecution for cattle theft in which the indictment advised the defendant that he was subject to a life imprisonment punishment as an habitual criminal under § 99-19-83, the defendant's demand for a special venire under § 13-5-77 and for 12 peremptory challenges under § 99-17-3 was properly denied where, although the defendant might receive a life sentence if convicted, the underlying offense of cattle theft was not a capital crime; § 99-19-83 does not make it a crime for one to be a multiple offender even though it affects the severity of punishment. However, the case would be remanded for resentencing where the defendant at the time of his indictment in the present cause had not served terms of one year or more for his prior convictions dated March 14 and April 4, 1980, and subsequent to the date of the present offense before the court: September 1979. Yates v. State, 396 So. 2d 629, 1981 Miss. LEXIS 1992 (Miss. 1981).

Where the charge is for manslaughter, the defendant has a right to call a special venire. Hathorn v. State, 225 Miss. 77, 82 So. 2d 653, 1955 Miss. LEXIS 561 (Miss. 1955).

A jury impaneled from a special venire and accepted by the accused without objection, is not illegal because of failure of the court to examine the jurors. Skinner v. State, 53 Miss. 399, 1876 Miss. LEXIS 86 (Miss. 1876).

If, on defendant's motion, the special venire be quashed because the box from which it was drawn was not legally prepared, he cannot be heard to complain of the court ordering a special venire summoned. Russell v. State, 53 Miss. 367, 1876 Miss. LEXIS 82 (Miss. 1876), limited, Smith v. State, 55 Miss. 410, 1877 Miss. LEXIS 150 (Miss. 1877).

A direction in a special venire to summon a jury "residing as near as may be to the place where the murder was committed," is erroneous. Shaffer v. State, 2 Miss. 238, 1835 Miss. LEXIS 14 (Miss. 1835).

3. Time for requesting special venire.

Capital murder defendant was not entitled to special venire without making timely request before trial, notwithstanding that state made such request. Davis v. State, 684 So. 2d 643, 1996 Miss. LEXIS 292 (Miss. 1996), cert. denied, 520 U.S. 1170, 117 S. Ct. 1437, 137 L. Ed. 2d 544, 1997 U.S. LEXIS 2295 (U.S. 1997).

Although a special venire could have been demanded in an armed robbery prosecution if the demand had been timely made, the trial court did not abuse its discretion in overruling the defendant's motion for a special venire where the motion was made just prior to the start of trial. Williams v. State, 590 So. 2d 1374, 1991 Miss. LEXIS 801 (Miss. 1991).

A motion for a special venire was properly denied where the motion was not filed until approximately one week before the start of trial, even though the court had announced that the case was ready for trial some two weeks earlier, and where the motion was not called to the court's attention until the day of trial. Sharplin v. State, 357 So. 2d 940, 1978 Miss. LEXIS 2519 (Miss. 1978).

It is not necessary that a special venire, if desired, be requested immediately upon the entry of a plea of not guilty, the purpose of the statute being accomplished if such request be made when the court ascertains and announces that the case is ready for trial. Porter v. State, 193 Miss. 774, 10 So. 2d 377, 1942 Miss. LEXIS 143 (Miss. 1942).

When court in a capital case announced ready for trial, the request for a special venire became due without reference to the time then set for trial, and, counsel for the accused having failed at that time to request a special venire or to obtain permission from the court to make such request at a later date, denial of counsel's request for special venire, when the case was called for trial, was proper, notwithstanding counsel stated to the court, when the case was set for trial, that he would decide later whether he wanted a special venire, in the absence of any understanding to that effect on the part of the court or of its doing anything to mislead counsel into thinking the contrary. Porter v. State, 193 Miss. 774, 10 So. 2d 377, 1942 Miss. LEXIS 143 (Miss. 1942).

4. Second special venire.

Upon exhaustion of special venire, the lower court did not abuse its discretion in overruling defendant's motion for continuance and that another special venire be drawn, since it could properly resort to the regular venire to complete the jury. McBride v. State, 492 So. 2d 581, 1986 Miss. LEXIS 2539 (Miss. 1986).

Where all except about twelve of special venire were found disqualified on voir dire, court properly disallowed second special venire. Harrison v. State, 168 Miss. 699, 152 So. 494, 1934 Miss. LEXIS 380 (Miss. 1934).

Second special venire is allowed only when first has been quashed for reasons which so completely dislodge first special venire that it never became special venire. Harrison v. State, 168 Miss. 699, 152 So. 494, 1934 Miss. LEXIS 380 (Miss. 1934).

5. Drawing and executing special venire.

Capital murder defendant's absence during the drawing of a special venire was not reversible error and did not support a claim of ineffective assistance of counsel where no prejudice resulted. Burns v. State, 813 So. 2d 668, 2001 Miss. LEXIS 252 (Miss. 2001).

While it would be the better practice to have the accused present when a special venire is drawn, the drawing of a special venire for a robbery prosecution, in the absence of the defendant and his counsel, was not reversible error, particularly where the defendant did not claim that he was prejudiced or that his case was not heard by an impartial jury, the drawing of a special venire not being a part of the actual trial. Kendall v. State, 249 So. 2d 657, 1971 Miss. LEXIS 1171 (Miss. 1971), cert. denied, 404 U.S. 1040, 92 S. Ct. 725, 30 L. Ed. 2d 733, 1972 U.S. LEXIS 3956 (U.S. 1972).

In selecting the members of a special venire, pursuant to the court's order because the jury box was empty, it was proper for the sheriff's office deputy to make that selection from the registration list with the view of obtaining only qualified electors who were not exempt from jury service. Dampier v. State, 31 So. 2d 115 (Miss. 1947).

In homicide prosecution, where court ordered special venire from first district of county, refusal to order one from second district held not error, statutes being directory. Taylor v. State, 148 Miss. 621, 114 So. 390, 1927 Miss. LEXIS 48 (Miss. 1927).

The special venire should be drawn from the jury box as directed where it contains sufficient names and a failure to do so is error. Lee v. State, 138 Miss. 474, 103 So. 233, 1925 Miss. LEXIS 102 (Miss. 1925).

The statute is directory merely and any irregularity of the court in the drawing of a special venire is not prejudicial where the jury drawn is an impartial one. Buchanan v. State, 84 Miss. 332, 36 So. 388, 1904 Miss. LEXIS 44 (Miss. 1904).

A special venire may be drawn during the pendency of another case. Penn v. State, 62 Miss. 450, 1884 Miss. LEXIS 102 (Miss. 1884).

6. —Summoning venire.

The fact that the trial court gave an order for the issuance of a special venire facias directed to the sheriff instead of to the circuit clerk did not require that the special venire be quashed, for the provisions of this section [Code 1942, § 1795] are directory only. Moore v. State, 237 So. 2d 844, 1970 Miss. LEXIS 1511 (Miss. 1970).

Sheriff may be directed to summon qualified electors as a special venire, without all of them having been drawn from the jury box. Dean v. State, 234 Miss. 376, 106 So. 2d 501, 1958 Miss. LEXIS 506 (Miss. 1958).

All provisions of law for impaneling juries are directory merely and where there are not sufficient names in the jury box for the venire the court may order the jury summoned by him. McVey v. State, 117 Miss. 243, 78 So. 150, 1918 Miss. LEXIS 171 (Miss. 1918).

The sheriff is not required to furnish a list of those who would be summoned to the clerk before summoning them but it is sufficient to furnish their names after they are summoned. Walford v. State, 106 Miss. 19, 63 So. 316, 1913 Miss. LEXIS 101 (Miss. 1913).

It is not reversible error in a capital case to refuse, both before and after exhausting the regular venire, to receive as a juror a member of the special venire who was absent on the call thereof but present when offered by the defense, and who thereupon ordered talesmen to be summoned where the whole record shows that the accused was not thereby prejudiced. Steele v. State, 76 Miss. 387, 24 So. 910, 1898 Miss. LEXIS 118 (Miss. 1898).

Under this section [Code 1942, § 1795], requiring that where a special venire is ordered, the jury shall be impaneled from those "examined and in attendance," it is not error to refuse accused compulsory process for a venireman summoned and not in attendance. Hale v. State, 72 Miss. 140, 16 So. 387, 1894 Miss. LEXIS 88 (Miss. 1894).

In executing a special venire, where the names are not drawn, the sheriff is not bound to summon every man he meets until he gets the required number. Cavanah v. State, 56 Miss. 299, 1879 Miss. LEXIS 116 (Miss. 1879).

7. —Number of persons.

In directing clerk to draw 150 names, trial judge complies with statutory requirement of § 13-5-77 for the number of names to be drawn for special venire even though of 150 names drawn, only 67 were statutorily qualified to serve on special venire. Booker v. State, 449 So. 2d 209, 1984 Miss. LEXIS 1682 (Miss.), cert. denied, 469 U.S. 873, 105 S. Ct. 230, 83 L. Ed. 2d 159, 1984 U.S. LEXIS 368 (U.S. 1984).

Unless record shows that defendant requested larger number, limitation and special venire to forty men at instance of state is not ground for complaint, even though all of the special veniremen except eleven were excused at the trial and only three of these were accepted to serve as jurors. Williams v. State, 26 So. 2d 64 (Miss. 1946).

In murder prosecution, limiting number of special venire to 100 citizens after granting motion for special venire by defendant who asked for 250 citizens held not abuse of trial court's discretion. Owens v. State, 169 Miss. 141, 152 So. 651, 1934 Miss. LEXIS 19 (Miss. 1934).

Where the sheriff served only thirty men instead of forty as directed from which a jury was obtained the defendant cannot complain where it is not shown that the jury was prejudiced or impartial. Walford v. State, 106 Miss. 19, 63 So. 316, 1913 Miss. LEXIS 101 (Miss. 1913).

8. —Waiver.

Defendant in capital case not having interposed objections to manner of drawing of special venire at time venire was being drawn waived objection. Arnold v. State, 171 Miss. 164, 157 So. 247, 1934 Miss. LEXIS 217 (Miss. 1934).

9. Selecting jurors from bystanders.

In the absence of fraud or other improper motive the fact that a bailiff summoned additional prospective jurors by telephone rather than selecting them from among the bystanders was not reversible error. Boles v. State, 288 So. 2d 718, 1974 Miss. LEXIS 1859 (Miss. 1974).

Where on the motion of the defendant in a capital case the court directed the sheriff to summon a jury from the bystanders the defendant cannot complain thereat after conviction. Cook v. State, 90 Miss. 137, 43 So. 618, 1907 Miss. LEXIS 84 (Miss. 1907).

10. Discharge of venireman.

The judge has no authority to discharge one of the special venire without sufficient cause shown. Boles v. State, 21 Miss. 398, 1850 Miss. LEXIS 36 (Miss. 1850); Boles v. State, 24 Miss. 445, 1852 Miss. LEXIS 77 (Miss. 1852).

It is a proper exercise of the discretion of the court to set aside a venireman who is the acting jailer of a county. Hale v. State, 72 Miss. 140, 16 So. 387, 1894 Miss. LEXIS 88 (Miss. 1894).

After the jury had been impaneled and sworn, a juror arose and informed the court that he had been of the grand jury that found the bill. It was not error for the court to set him aside, complete the jury and have it resworn. Jefferson v. State, 52 Miss. 767, 1876 Miss. LEXIS 288 (Miss. 1876).

11. Quashing special venire.

A special venire will not be quashed because only eleven of the forty called are available. Smith v. State, 242 Miss. 728, 137 So. 2d 172, 1962 Miss. LEXIS 586 (Miss. 1962).

Special venire will not be quashed except for fraud or a total departure from procedure laid down by the statute. Riley v. State, 208 Miss. 336, 44 So. 2d 455, 1950 Miss. LEXIS 252 (Miss. 1950); Smith v. State, 242 Miss. 728, 137 So. 2d 172, 1962 Miss. LEXIS 586 (Miss. 1962).

Special venire will not be set aside merely because sheriff did not follow court's recommended procedure in selecting panel where time was short and fair and impartial panel was summoned. Riley v. State, 208 Miss. 336, 44 So. 2d 455, 1950 Miss. LEXIS 252 (Miss. 1950).

Drawing of special venire in capital case where regular jury box was exhausted from jury list made up by board of supervisors for succeeding year, although thirty days had not yet elapsed since making up of list as required by statute before persons on list became eligible as jurors, held mere irregularity only and not to warrant quashing of panel. Arnold v. State, 171 Miss. 164, 157 So. 247, 1934 Miss. LEXIS 217 (Miss. 1934).

A special jury properly summoned under this statute will not be quashed unless fraud is shown. Bond v. State, 128 Miss. 792, 91 So. 461, 1922 Miss. LEXIS 167 (Miss. 1922).

A special venire will not be quashed because the trial judge caused the sheriff to submit to him before the service of the writ the names of the deputies selected to execute it, that they might be shown to the attorneys in the case with a view of receiving objections to them, or because on objection by the state's attorney two of the persons named were not appointed, the sheriff appointing two unobjectionable persons in their place. If such a proceeding be irregular, it is cured by Code 1906, § 2718 (Code 1942, § 1798) providing that juries irregularly summoned shall be deemed legal after being impaneled and sworn. Lipscomb v. State, 76 Miss. 223, 25 So. 158, 1898 Miss. LEXIS 130 (Miss. 1898).

It is no ground to quash a special venire that one of the jurors was not a citizen of the United States. Durrah v. State, 44 Miss. 789, 1871 Miss. LEXIS 38 (Miss. 1871).

RESEARCH REFERENCES

ALR.

Right of accused to insist, over objection of prosecution or court, upon trial by court without a jury. 51 A.L.R.2d 1346.

Am. Jur.

47 Am. Jur. 2d, Jury §§ 110, 123.

CJS.

50 C.J.S., Juries §§ 322 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 59, March 1979.

§ 13-5-79. When opinion as to guilt or innocence will not render one incompetent in a criminal case.

Any person, otherwise competent, who will make oath that he is impartial in the case, shall be competent as a juror in any criminal case, notwithstanding the fact that he has an impression or an opinion as to the guilt or innocence of the accused, if it appear to the satisfaction of the court that he has no bias or feeling or prejudice in the case, and no desire to reach any result in it, except that to which the evidence may conduct. Any juror shall be excluded, however, if the court be of opinion that he cannot try the case impartially, and the exclusion shall not be assignable for error.

HISTORY: Codes, 1880, § 3072; 1892, § 2355; 1906, § 2685; Hemingway's 1917, § 2177; 1930, § 2030; 1942, § 1763.

Cross References — Examination of jurors by attorneys or litigants, see § 13-5-69.
Challenges to arrays and quashals of venires facias generally, see § 13-5-81.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
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1. Validity.

This section [Code 1942, § 1763] is not in violation of Const. 1890 § 26, securing the right of an accused person to an "impartial jury." Alfred v. State, 37 Miss. 296, 1859 Miss. LEXIS 19 (Miss. 1859); Green

v. State, 72 Miss. 522, 17 So. 381, 1895 Miss. LEXIS 16 (Miss. 1895).

2. Construction and application generally.

In a capital case each juror must be sworn to try the case. Miller v. State, 122 Miss. 19, 84 So. 161, 1920 Miss. LEXIS 415 (Miss. 1920).

The intention of the laws is that the juror shall be unaffected by any previous judgment, opinion or bias, either as respects the parties or the subject-matter in controversy. Brown v. State, 57 Miss. 424, 1879 Miss. LEXIS 96 (Miss. 1879).

3. Power and duty of court.

Before any juror is excused from service, he or she must be found to be unable to decide the case fairly and impartially on the merits and the reason, whatever it may be, should always be noted on the record. Brown v. State, 763 So. 2d 189, 2000 Miss. App. LEXIS 118 (Miss. Ct. App. 2000).

A judge has broad discretion to determine whether a prospective juror can be impartial, notwithstanding the juror's admission under oath that he or she can be impartial. Coverson v. State, 617 So. 2d 642, 1993 Miss. LEXIS 168 (Miss. 1993).

Trial court did not abuse its discretion in excluding for cause a potential juror who was a double first cousin to a defendant charged with uttering a forgery, and with whom defendant had discussed the case prior to trial, despite the juror's testimony that she could still be fair and impartial. Burt v. State, 493 So. 2d 1325, 1986 Miss. LEXIS 2490 (Miss. 1986).

One may not complain of exclusion of jurors by trial judge, if those selected were fair and impartial. Sherman v. State, 234 Miss. 775, 108 So. 2d 205, 1959 Miss. LEXIS 554 (Miss. 1959).

Where qualification of prospective juror is a close question but he is held to be qualified and defendant peremptorily excuses such juror, there is no legal duty on the court to grant an extra peremptory challenge to the defendant. Shimniok v. State, 197 Miss. 179, 19 So. 2d 760, 1944 Miss. LEXIS 289 (Miss. 1944).

If a doubt arises as to the competency of a juror he should be excluded. The court has the discretion to do this at any time before evidence is submitted. Mabry v. State, 71 Miss. 716, 14 So. 267, 1893 Miss. LEXIS 76 (Miss. 1893).

The court always has power to impanel an impartial jury, and when it is apparent that such only is the effect of its ruling, the same will be sustained. Smith v. State, 61 Miss. 754, 1884 Miss. LEXIS 159 (Miss. 1884).

The court may discharge from the panel a juror who has been accepted and sworn before testimony is introduced, if it be discovered that he is incompetent. Williams v. State, 32 Miss. 389, 1856 Miss. LEXIS 223 (Miss. 1856).

The court must examine into the sufficiency of every objection to a juror. The consent of the other party to the objection does not deprive the court of the power. McCarty v. State, 26 Miss. 299, 1853 Miss. LEXIS 93 (Miss. 1853).

The court may set aside a juror who has not been challenged by either party. Lewis v. State, 17 Miss. 115, 1847 Miss. LEXIS 95 (Miss. 1847); Williams v. State, 32 Miss. 389, 1856 Miss. LEXIS 223 (Miss. 1856).

It is the duty of the court to see that a fair, competent and impartial jury is selected to try every case. Ferriday v. Selser, 5 Miss. 506, 1840 Miss. LEXIS 41 (Miss. 1840); Gilliam v. Brown, 43 Miss. 641, 1870 Miss. LEXIS 73 (Miss. 1870); White v. State, 52 Miss. 216, 1876 Miss. LEXIS 202 (Miss. 1876).

4. Examination on voir dire.

Defendant cited no authority for his proposition that the trial judge's actions during voir dire were inappropriate, nor did he cite any evidence in the record that indicated the jury was prejudiced against him. Neal v. State, 15 So. 3d 388, 2009 Miss. LEXIS 272 (Miss. 2009), dismissed, — So. 3d —, 2016 Miss. LEXIS 340 (Miss. 2016).

A trial court in a capital murder prosecution did not abuse its discretion by refusing to grant the defendant's motion for individual sequestered voir dire of the entire venire where the court asked the collective venire about the effect of pretrial publicity or information received about the case, and the court later asked if there was any reason that a juror felt that he or she could not be fair and impartial, and anyone who responded affirmatively was questioned individually in chambers. Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

Ruling out defendant's questions to jurors as to effect on them of federal government's participation in prosecution held not prejudicial error. Eaton v. State, 163 Miss. 130, 140 So. 729, 1932 Miss. LEXIS 23 (Miss. 1932).

In personal injury for punitive damages plaintiff may inquire of jurymen whether they would impose punitive damages if so instructed. Yazoo & M. V. R. Co. v. Roberts, 88 Miss. 80, 40 So. 481, 1906 Miss. LEXIS 108 (Miss. 1906).

A man's conception of a reasonable doubt is not a proper subject of inquiry when he is presented as a juror in a criminal case and examined on his voir dire. Fugitt v. State, 85 Miss. 86, 37 So. 557, 1904 Miss. LEXIS 117 (Miss. 1904).

Whether a juror would believe certain witnesses for the state on oath is not a proper subject of inquiry upon his voir dire examination in a criminal case. Fugitt v. State, 85 Miss. 86, 37 So. 557, 1904 Miss. LEXIS 117 (Miss. 1904).

It is the duty of the court to see that an impartial jury is impaneled and it may in a murder case ask each juror if he is opposed to capital punishment. White v. State, 52 Miss. 216, 1876 Miss. LEXIS 202 (Miss. 1876).

5. —Concealment of facts.

Court rejected defendant's argument that the jury panel was tained by the foreperson, who was a retired law enforcement officer who had previously had a civil conflict with defendant's father, because, although the juror did not provide any information about a prior relationship or interaction with defendant's father during the voir dire, the juror took an oath to be fair and impartial. Jordan v. State, 995 So. 2d 94, 2008 Miss. LEXIS 489 (Miss. 2008).

If a juror on his voir dire conceals facts which render him incompetent and serves upon the jury, a verdict of conviction will be set aside and a new trial granted. Sheppric v. State, 79 Miss. 740, 31 So. 416 (Miss. 1901).

A juror who on his voir dire conceals the fact from the court that he has formed and expressed such an opinion, is not rendered competent by this section [Code 1942, § 1763], and a verdict of guilty found by a jury of which he is a member should be set aside. The juror must disclose all of the facts, and then the court, under the statute, must pass upon his competency. Jeffries v. State, 74 Miss. 675, 21 So. 526, 1897 Miss. LEXIS 45 (Miss. 1897).

6. Impartiality of jurors in general.

In a thirteen-year-old defendant's trial for murder, the trial court properly excluded jurors that it determined would be influenced by defendant's age. Edmonds v. State, 2006 Miss. App. LEXIS 88 (Miss. Ct. App. Jan. 31, 2006), op. withdrawn, sub. op., 955 So. 2d 864, 2006 Miss. App. LEXIS 311 (Miss. Ct. App. 2006).

The trial court did not err in failing to dismiss a juror whose sister-in-law was in some manner (unknown by the juror) related to the victim's nephew by marriage. Langston v. State, 791 So. 2d 273, 2001 Miss. App. LEXIS 206 (Miss. Ct. App. 2001).

A murder defendant was not denied a fair trial by virtue of the fact that 9 of the 42 members of the regular and special venire panels had relatives who had been murdered where 7 of the members of the venire who had had relatives murdered did not serve on the jury and the defense had sufficient peremptory challenges remaining to remove the other 2 jurors if they so desired. Shell v. State, 554 So. 2d 887, 1989 Miss. LEXIS 492 (Miss. 1989), rev'd, in part, 498 U.S. 1, 111 S. Ct. 313, 112 L. Ed. 2d 1, 1990 U.S. LEXIS 5501 (U.S. 1990).

Where a venireman, contrary to the trial judge's instructions at the beginning of the voir dire examination, volunteered in the presence of others that in his opinion the accused was automatically guilty of rape, whereupon the trial court sent the offending juror to jail and interrogated the other veniremen as to whether they could disregard the expressed opinion and base a verdict solely upon the evidence of the case, and the court's instructions, which was answered in the affirmative by all of the veniremen, the trial court did not err in overruling the accused's motion to enter a mistrial and quash the venire. Cameron v. State, 233 Miss. 404, 102 So. 2d 355, 1958 Miss. LEXIS 397 (Miss. 1958).

In action against city for damages, error in excusing prospective jurors from city on ground that being taxpayers, of itself, disqualified them did not require reversal, where it did not appear that the jurors who were impaneled and before whom case was tried were not fair and impartial. City of Jackson v. McFadden, 181 Miss. 1, 177 So. 755, 1937 Miss. LEXIS 130 (Miss. 1937).

Jury hearing testimony in liquor case could try similar case in which same witness testified regarding alleged liquor sales made same night. Ladner v. State, 148 Miss. 243, 114 So. 341, 1927 Miss. LEXIS 33 (Miss. 1927).

The juror who was an employee of the party alleged to be robbed of electricity is not impartial and cannot be allowed to sit in the case. Berbette v. State, 109 Miss. 94, 67 So. 853, 1915 Miss. LEXIS 119 (Miss. 1915).

Every defendant is entitled to a fair and impartial jury. Collins v. State, 99 Miss. 47, 54 So. 665, 1910 Miss. LEXIS 12 (Miss. 1910).

The competency of jurors is not determined by the character of evidence expected to be introduced, but by the fitness or unfitness of the juror with respect to the standard erected by law for every character of case. Coleman v. State, 59 Miss. 484, 1882 Miss. LEXIS 140 (Miss. 1882).

7. Interest, bias or prejudice.

Trial court properly failed to strike prospective jurors for cause because there was no showing that either juror had a close personal relationship with the victim's son, but rather, there was only a showing that the jurors and the son had worked together and that the brother of one of the jurors was friends with the son; the relationships disclosed were insufficient to disturb the trial court's judgment that both prospective jurors on their oaths could be impartial in defendant's trial. Patton v. State, 248 So. 3d 763, 2018 Miss. LEXIS 62 (Miss. 2018).

That a juror in an armed robbery case knew the victim and had herself been a robbery victim did not disqualify her from serving as a juror and did not require the trial court to sua sponte disqualify her because the juror affirmatively indicated that neither her relationship with the victim nor her prior circumstance as a robbery victim would prevent her from being fair and impartial and would not affect her ability to render a judgment based solely on the evidence presented. Archer v. State, 986 So. 2d 951, 2008 Miss. LEXIS 345 (Miss. 2008).

Where a juror in a sexual battery case admitted that she knew many of the witnesses who were going to be called to testify, the trial court did not abuse its discretion by failing to dismiss the juror for cause under Miss. Code Ann. § 13-5-79. The juror did not have a close personal relationship with the witnesses, but only knew them as members of the community; the juror confirmed that she could be fair and impartial. Smith v. State, 989 So. 2d 973, 2008 Miss. App. LEXIS 255 (Miss. Ct. App. 2008).

The court properly excused a juror for cause in a murder prosecution where the juror was related to the defendant and her stepfather was going to be called as a witness during the case in chief. Humphrey v. State, 759 So. 2d 368, 2000 Miss. LEXIS 101 (Miss. 2000).

In a case where defendant was convicted of simple assault and kidnapping, a juror was properly excluded for cause under Miss. Code Ann. § 13-5-79 for going off on a tangent during questioning; inter alia, the juror started asking about when it would be permissible to hit a woman, such as in a case of self-defense, and this issue was totally irrelevant to the case. Williams v. State, 960 So. 2d 506, 2006 Miss. App. LEXIS 786 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 385 (Miss. 2007), cert. denied, 552 U.S. 1068, 128 S. Ct. 722, 169 L. Ed. 2d 565, 2007 U.S. LEXIS 12894 (U.S. 2007).

A juror in a criminal prosecution should have been struck for cause where his sister was employed as an assistant district attorney. Hartfield v. Hartford Life & Accident Ins. Co., 656 So. 2d 104, 1995 Miss. LEXIS 297 (Miss. 1995).

A trial court in a robbery prosecution did not err in excusing a juror where the juror indicated extra-judicial knowledge concerning the person with whom the defendant was living at or near the time of the robbery, his statements were confusing concerning the effect of this knowledge, and it was not clear whether this knowledge would affect his verdict. Green v. State, 644 So. 2d 860, 1994 Miss. LEXIS 495 (Miss. 1994).

While a prospective juror is not per se precluded from serving on the jury where the juror or a member of his or her family has been represented by an attorney who is involved in the case, a trial judge should carefully consider those instances in which a prospective juror or a family member has been represented by one of the attorney's involved in the matter before him or her; despite a prospective juror's honest and sincere belief that he or she can be completely fair and impartial, that person may find it very difficult to return a verdict against the client of an attorney to whom that person or a family member has turned for legal counsel in the past. Toyota Motor Corp. v. McLaurin, 642 So. 2d 351, 1994 Miss. LEXIS 320 (Miss. 1994).

In a capital murder case, the trial court properly excused a juror whose wife was defendant's second cousin. Gilliard v. State, 428 So. 2d 576, 1983 Miss. LEXIS 2437 (Miss.), cert. denied, 464 U.S. 867, 104 S. Ct. 40, 78 L. Ed. 2d 179, 1983 U.S. LEXIS 1737 (U.S. 1983), disapproved, Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69, 1986 U.S. LEXIS 150 (U.S. 1986).

Action of court, in murder prosecution wherein defendants were convicted and death sentence imposed, in holding as qualified a prospective juror who was present at deceased's funeral, did not prejudice defendants where they peremptorily excused the juror. Shimniok v. State, 197 Miss. 179, 19 So. 2d 760, 1944 Miss. LEXIS 289 (Miss. 1944).

The fact that prospective juror from city is a taxpayer may be basis of bias or prejudice that might, owing to existence of such bias or prejudice, disqualify the prospective juror in action against city, and, if trial judge is of the opinion, after inquiry, that prospective juror is not fair and impartial, he may be excused. City of Jackson v. McFadden, 181 Miss. 1, 177 So. 755, 1937 Miss. LEXIS 130 (Miss. 1937).

The mere fact that a prospective juror from city is a taxpayer with no interest different from other taxpayers of city does not, per se, disqualify prospective juror in action against city. City of Jackson v. McFadden, 181 Miss. 1, 177 So. 755, 1937 Miss. LEXIS 130 (Miss. 1937).

In action against city for damages, excusing prospective jurors from city on ground that being taxpayers, of itself, disqualified them, constituted error. City of Jackson v. McFadden, 181 Miss. 1, 177 So. 755, 1937 Miss. LEXIS 130 (Miss. 1937).

Where a material witness for the state is a Negro the admission of a juror that he would not convict on Negro testimony renders such juror incompetent. Burrage v. State, 101 Miss. 598, 58 So. 217, 1912 Miss. LEXIS 10 (Miss. 1912).

The statement of juror that he would give defendant "a life time sentence anyway" renders him prejudiced. Martin v. State, 98 Miss. 676, 54 So. 148, 1910 Miss. LEXIS 109 (Miss. 1910).

A venireman who believed an insult given by a Negro would fully justify a white man in killing him is unfit for jury service in the prosecution at bar. Stricklin v. State, 13 So. 898 (Miss. 1893).

One who has no hostility to the accused, and who is not shown to be so biased by a preconceived opinion as to render him incompetent as a juror, is not disqualified though he may have a bad opinion of the defendant's character. Helm v. State, 67 Miss. 562, 7 So. 487, 1890 Miss. LEXIS 102 (Miss. 1890).

The cousin of a party indicted for the same offense as the prisoner, and also one who states he sympathizes with defendants, are incompetent. Smith v. State, 61 Miss. 754, 1884 Miss. LEXIS 159 (Miss. 1884).

8. Formation or expression of opinion.

Prospective jurors' answer to one question about whether they would automatically impose a life sentence on a person convicted of rape was insufficient to establish a clear showing of impaired ability to perform the responsibilities of a juror, as required to strike prospective jurors for cause. Martin v. State, 592 So. 2d 987, 1991 Miss. LEXIS 963 (Miss. 1991).

That a juror has formed an impression about the case does not disqualify him where he states that his opinion is not fixed and that he will decide the case on the evidence. Simmons v. State, 241 Miss. 481, 130 So. 2d 860, 1961 Miss. LEXIS 366 (Miss. 1961).

Where a venireman, contrary to the trial judge's instructions at the beginning of the voir dire examination, volunteered in the presence of others that in his opinion the accused was automatically guilty of rape, whereupon the trial court sent the offending juror to jail and interrogated the other veniremen as to whether they could disregard the expressed opinion and base a verdict solely upon the evidence of the case, and the court's instructions, which was answered in the affirmative by all of the veniremen, the trial court did not err in overruling the accused's motion to enter a mistrial and quash the venire. Cameron v. State, 233 Miss. 404, 102 So. 2d 355, 1958 Miss. LEXIS 397 (Miss. 1958).

This section [Code 1942, § 1763] does not necessarily imply that a man is incompetent who has an opinion. The onus is on the court in the exercise of its enlightened discretion to decide whether the person tendered can "try the case impartially." Klyce v. State, 79 Miss. 652, 31 So. 339, 1901 Miss. LEXIS 113 (Miss. 1901).

9. —Opinion not affecting competency.

Trial court did not abuse its discretion in denying defendant's challenges for cause to three jurors as each took an oath that they were able to remain impartial; the fact that some of the jurors wondered why defendant was in the room was not dispositive that they could not be impartial. White v. State, 969 So. 2d 72, 2007 Miss. App. LEXIS 247 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 658 (Miss. 2007).

Trial court's refusal to excuse for cause jurors who stated on voir dire that they had read newspaper articles or seen television newscasts about the case after being admonished by trial court not to do so was not prejudicial error in murder prosecution; upon questioning, none of these jurors said that his or her opinion would be affected by anything they had read or seen. De La Beckwith v. State, 707 So. 2d 547, 1997 Miss. LEXIS 749 (Miss. 1997), cert. denied, 525 U.S. 880, 119 S. Ct. 187, 142 L. Ed. 2d 153, 1998 U.S. LEXIS 5751 (U.S. 1998).

Proposed juror, although having fixed opinion as disclosed by voir dire examination, held competent, where entire examination disclosed he had no interest, bias, or prejudice, and that personal opinion would yield to evidence. Wampold v. State, 170 Miss. 732, 155 So. 350, 1934 Miss. LEXIS 170 (Miss. 1934).

A mere opinion formed on rumor may not render a juror incompetent. Donahue v. State, 142 Miss. 20, 107 So. 15, 1926 Miss. LEXIS 55 (Miss. 1926).

Opinions founded on rumor will not render incompetent one who declares he can bring in an impartial verdict. Sam v. State, 21 Miss. 189, 1849 Miss. LEXIS 160 (Miss. 1849); Nelms v. State, 21 Miss. 500, 1850 Miss. LEXIS 51 (Miss. 1850); Ogle v. State, 33 Miss. 383, 1857 Miss. LEXIS 51 (Miss. 1857); Logan v. State, 50 Miss. 269, 1874 Miss. LEXIS 55 (Miss. 1874).

Merely slight impressions in the mind of a juror that will not influence him do not disqualify him. Schwartz v. State, 103 Miss. 711, 60 So. 732, 1912 Miss. LEXIS 220 (Miss. 1912); Howell v. State, 107 Miss. 568, 65 So. 641, 1914 Miss. LEXIS 120 (Miss. 1914).

Superficial impressions which will yield to testimony readily do not disqualify a juror. Whitehead v. State, 97 Miss. 537, 52 So. 259, 1910 Miss. LEXIS 226 (Miss. 1910); Howell v. State, 107 Miss. 568, 65 So. 641, 1914 Miss. LEXIS 120 (Miss. 1914).

Under Code 1892, § 2355 (Code 1942, § 2177), jurors who have an opinion based on rumors which they have heard, which may be removed by evidence, and who have not talked to witnesses, have no prejudice against accused, and state that they can give him a fair trial on the evidence, uninfluenced by the rumors, are competent. Evans v. State, 87 Miss. 459, 40 So. 8, 1905 Miss. LEXIS 166 (Miss. 1905); Cook v. State, 90 Miss. 137, 43 So. 618, 1907 Miss. LEXIS 84 (Miss. 1907).

A juror who had heard rumors but had never heard any of the witnesses and who had an opinion from what he had heard, but could give defendant a fair trial, or a juror who had heard nothing from anyone who personally knew the facts, but who had formed an opinion from what he had seen in the newspapers and could give defendant a fair trial, is competent. Gammons v. State, 85 Miss. 103, 37 So. 609, 1904 Miss. LEXIS 137 (Miss. 1904).

If a juror states that he had formed and expressed an opinion but that it was not fixed and would not affect his verdict, and the accused, without having exhausted his peremptory challenges, does not offer to challenge him either for cause or peremptorily, he will not, after conviction, be granted a new trial because the juror had expressed the opinion that he ought to be convicted. Schrader v. State, 84 Miss. 593, 36 So. 385, 1904 Miss. LEXIS 41 (Miss. 1904).

Under this section [Code 1942, § 1763] one is not incompetent merely because on his voir dire he states that he lives in the immediate neighborhood where the crime was committed, had heard it discussed and had formed an opinion as to the guilt or innocence of accused of such a fixed character that it would require evidence to remove it, provided that he makes oath that he can try the case fairly and impartially according to the evidence. Green v. State, 72 Miss. 522, 17 So. 381, 1895 Miss. LEXIS 16 (Miss. 1895).

The fact that a juror had conversed with a witness does not disqualify him if he have not a "fixed opinion" as to the guilt or innocence of the accused. Penn v. State, 62 Miss. 450, 1884 Miss. LEXIS 102 (Miss. 1884).

A juror, accepted by the accused, who had expressed an opinion founded on rumors but who stated he could do justice is not incompetent, where one of the counsel for accused knew that the juror had expressed such opinion. Parker v. State, 55 Miss. 414, 1877 Miss. LEXIS 151 (Miss. 1877).

A mere opinion on rumor that requires no testimony to remove will not render a juror incompetent. Lee v. State, 45 Miss. 114, 1871 Miss. LEXIS 57 (Miss. 1871); White v. State, 52 Miss. 216, 1876 Miss. LEXIS 202 (Miss. 1876); Evans v. State, 87 Miss. 459, 40 So. 8, 1905 Miss. LEXIS 166 (Miss. 1905); Cook v. State, 90 Miss. 137, 43 So. 618, 1907 Miss. LEXIS 84 (Miss. 1907).

10. —Opinion rendering juror incompetent.

Defendant's conviction for aggravated assault was appropriate pursuant to Miss. Code Ann. § 13-5-67 and Miss. Code Ann. § 13-5-79 because a juror's statement that she could not sit in judgment of another person properly led to her excuse for cause. Hawthorne v. State, 944 So. 2d 928, 2006 Miss. App. LEXIS 910 (Miss. Ct. App. 2006).

A juror fully acquainted with all testimony in the case by hearsay who has an opinion is disqualified. Darby v. State, 128 Miss. 438, 91 So. 37, 1922 Miss. LEXIS 127 (Miss. 1922).

A juror who has expressed an opinion that defendant should be convicted on general principles and his voir dire examination did not disclose such statement entitles defendant to a new trial. Martin v. State, 98 Miss. 676, 54 So. 148, 1910 Miss. LEXIS 109 (Miss. 1910).

Only strong and deep impressions that will preclude the mind against testimony in opposition thereto constitute objections that disqualify. Whitehead v. State, 97 Miss. 537, 52 So. 259, 1910 Miss. LEXIS 226 (Miss. 1910).

An opinion as to the guilt of the party which will require strong evidence to remove renders juror incompetent, although juror swears that he will be controlled by the evidence. Murphy v. State, 92 Miss. 203, 45 So. 865, 1908 Miss. LEXIS 184 (Miss. 1908).

Where it develops on a motion for a new trial that the juror had expressed an adverse opinion a new trial should be granted. Dennis v. State, 91 Miss. 221, 44 So. 825, 1907 Miss. LEXIS 150 (Miss. 1907).

The oath of the proffered juror is not conclusive, nor is he the judge of his own competency. A person is not qualified as a juror who has an opinion about the case and cannot say positively that he can try the case as though he had none, or who has an opinion about the case and from what he knows could bring in a verdict other than one predicated of a want of further knowledge without further evidence, or who has an opinion which it would require strong testimony to remove. Fugitt v. State, 82 Miss. 189, 33 So. 942, 1903 Miss. LEXIS 117 (Miss. 1903).

A juror in a criminal case who before the trial heard all the facts of the case from an eyewitness whom he regarded as truthful, whose statements he believed, and on them he had formed a fixed opinion, is incompetent under Const. 1890 § 26, securing a trial by an impartial jury and is not within this section [Code 1942, § 1763]. Sheppric v. State, 79 Miss. 740, 31 So. 416 (Miss. 1901).

A venireman who testifies on his voir dire that he had heard witnesses for the state talk about the case and believes what they told him and has formed and expressed an opinion which he still retains, and which he supposes would require testimony to remove, is incompetent under the Const. 1890 § 26, guaranteeing a trial by an impartial jury, although he further testifies that what he had heard would not prevent him from rendering a fair and impartial verdict. Klyce v. State, 79 Miss. 652, 31 So. 339, 1901 Miss. LEXIS 113 (Miss. 1901).

If a juror on his voir dire disclose that he has an opinion touching defendant's guilt which would require testimony to remove, or has doubts as to his ability to render an impartial verdict, it is not error for the court under this section [Code 1942, § 1763] to exclude him from the panel. McGuire v. State, 76 Miss. 504, 25 So. 495, 1898 Miss. LEXIS 148 (Miss. 1898).

A juror who has formed and expressed the opinion that defendant charged with murder "was not justified in killing deceased," is incompetent. Jeffries v. State, 74 Miss. 675, 21 So. 526, 1897 Miss. LEXIS 45 (Miss. 1897).

A juror who on his voir dire conceals the fact from the court that he has formed and expressed such an opinion is not rendered competent by this section [Code 1942, § 1763], and a verdict of guilty found by a jury of which he is a member should be set aside. The juror must disclose all the facts, and then the court, under the statute, must pass upon his competency. Jeffries v. State, 74 Miss. 675, 21 So. 526, 1897 Miss. LEXIS 45 (Miss. 1897).

One who has heard parts of a former trial, who declares that he has a fixed and definite opinion and will not say positively that he could try the accused as though he had no opinion, is not a competent juror. Mabry v. State, 71 Miss. 716, 14 So. 267, 1893 Miss. LEXIS 76 (Miss. 1893).

On a trial for perjury, one who has a fixed opinion as to the guilt of the person on whose trial the perjury is charged to have been committed, is disqualified although he has neither formed nor expressed an opinion as to the guilt of the accused. Brown v. State, 57 Miss. 424, 1879 Miss. LEXIS 96 (Miss. 1879).

A juror whose opinion is formed on common rumor which would require evidence to remove, is not an impartial juror. Cotton v. State, 31 Miss. 504, 1856 Miss. LEXIS 108 (Miss. 1856).

11. —Prior knowledge.

Where the record does not show prejudice-the objection that a grand jury's report was read in the hearing of some of the jury trying the case, where there is no objection then made, cannot be assigned as error. Spence v. State, 131 Miss. 91, 95 So. 97, 1922 Miss. LEXIS 271 (Miss. 1922).

Jurors who heard the evidence on a former trial of a co-defendant are incompetent. Langston v. State, 129 Miss. 394, 92 So. 554, 1922 Miss. LEXIS 54 (Miss. 1922).

In a murder case one is not incompetent because he heard the killing talked of at the time it occurred, but does not think he formed or expressed an opinion as to the guilt or innocence of the accused. Skinner v. State, 53 Miss. 399, 1876 Miss. LEXIS 86 (Miss. 1876).

12. Non-belief in, or opposition to, capital punishment.

A trial judge in a capital murder prosecution did not abuse his discretion by excusing a potential juror who initially indicated that she could not impose the death penalty, even though she subsequently indicated that there were some circumstances under which she could impose the death penalty, where she failed to clearly indicate that she was willing to set aside her own beliefs and follow the instructions and law as to the death penalty. Davis v. State, 660 So. 2d 1228, 1995 Miss. LEXIS 287 (Miss. 1995), cert. denied, 517 U.S. 1192, 116 S. Ct. 1684, 134 L. Ed. 2d 785, 1996 U.S. LEXIS 3101 (U.S. 1996).

A prospective juror may not be struck from the jury venire for cause simply because the juror voiced general objections to the death penalty or expressed conscientious or religious scruples against infliction of the death penalty. If a juror indicates that if he or she was convinced of the guilt of the defendant and the circumstances warranted a verdict of guilty, he or she could return a verdict of guilty although that verdict could result in the death penalty, then the juror may not be struck from the jury venire for cause, despite his or her objections and concerns. A prospective juror may be struck if the juror indicates that he or she cannot consider and decide the facts impartially or cannot conscientiously apply the law or the court's instructions. The juror need not expressly state that he or she absolutely refuses to consider the death penalty; an equivalent response made in any reasonable manner which indicates that the juror's position is firm will suffice. Willie v. State, 585 So. 2d 660, 1991 Miss. LEXIS 454 (Miss. 1991).

"Death qualification" of jurors prior to the guilt phase in a capital murder prosecution did not deprive the defendant of a jury composed of a fair cross section of the community. Minnick v. State, 551 So. 2d 77, 1988 Miss. LEXIS 612 (Miss. 1988), rev'd, 498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489, 1990 U.S. LEXIS 6118 (U.S. 1990), overruled, Willie v. State, 585 So. 2d 660, 1991 Miss. LEXIS 454 (Miss. 1991).

The exclusion of jurors who would not consider the death penalty under any circumstances was not error. Cole v. State, 525 So. 2d 365, 1987 Miss. LEXIS 2655 (Miss. 1987), cert. denied, 488 U.S. 934, 109 S. Ct. 330, 102 L. Ed. 2d 348, 1988 U.S. LEXIS 4775 (U.S. 1988).

Although excusing a prospective juror who would not vote to impose the death penalty under any facts or circumstances may have been error, it was harmless error where the defendant was indicted for murder but convicted of manslaughter. Wash v. State, 241 So. 2d 155, 1970 Miss. LEXIS 1326 (Miss. 1970).

A juror is not rendered incompetent who when asked if he had conscientious scruples against capital punishment replied that he "would not like for a man to be hung." Smith v. State, 55 Miss. 410, 1877 Miss. LEXIS 150 (Miss. 1877).

In a capital case the court of its own motion and over defendant's objection may reject a juror who is opposed to capital punishment. White v. State, 52 Miss. 216, 1876 Miss. LEXIS 202 (Miss. 1876); Russell v. State, 53 Miss. 367, 1876 Miss. LEXIS 82 (Miss. 1876), limited, Smith v. State, 55 Miss. 410, 1877 Miss. LEXIS 150 (Miss. 1877); Cooper v. State, 59 Miss. 267, 1881 Miss. LEXIS 116 (Miss. 1881).

A juror who has conscientious scruples about the infliction of capital punishment is incompetent when a verdict might be followed by the infliction of the death penalty. Lewis v. State, 17 Miss. 115, 1847 Miss. LEXIS 95 (Miss. 1847); Williams v. State, 32 Miss. 389, 1856 Miss. LEXIS 223 (Miss. 1856); Jones v. State, 57 Miss. 684, 1880 Miss. LEXIS 37 (Miss. 1880); Spain v. State, 59 Miss. 19, 1881 Miss. LEXIS 66 (Miss. 1881).

A person who states on his voir dire that he has conscientious scruples against capital punishment is not impartial between the state and the prisoner. Williams v. State, 32 Miss. 389, 1856 Miss. LEXIS 223 (Miss. 1856); Fortenberry v. State, 55 Miss. 403, 1877 Miss. LEXIS 149 (Miss. 1877); Jones v. State, 57 Miss. 684, 1880 Miss. LEXIS 37 (Miss. 1880).

13. Opposition to circumstantial evidence.

Jurors who will not on circumstantial evidence convict of murder may be rejected in a case depending on direct testimony. Coleman v. State, 59 Miss. 484, 1882 Miss. LEXIS 140 (Miss. 1882).

14. Rulings on challenges.

Trial court could excuse prospective juror from serving on panel hearing capital murder case, on grounds that prospect was mother of 8-year-old boy and that she would feel apprehensive and be distracted if required to be away from child in event jury was sequestered. Walker v. State, 671 So. 2d 581, 1995 Miss. LEXIS 494 (Miss. 1995), cert. denied, 519 U.S. 1011, 117 S. Ct. 518, 136 L. Ed. 2d 406, 1996 U.S. LEXIS 7236 (U.S. 1996).

Trial court did not improperly excuse prospective juror from service in capital murder case; prospect tailored her response to question whether she could follow the law at both phases of trial to whichever counsel was questioning her, and she indicated she did not want to be involved in jury service and only "guessed" that she would "try" to listen to evidence and be fair to both sides. Walker v. State, 671 So. 2d 581, 1995 Miss. LEXIS 494 (Miss. 1995), cert. denied, 519 U.S. 1011, 117 S. Ct. 518, 136 L. Ed. 2d 406, 1996 U.S. LEXIS 7236 (U.S. 1996).

A capital murder defendant was not denied a fair trial because he was forced to use his last peremptory challenge to remove a juror who was allegedly potentially biased since the loss of a peremptory challenge does not constitute a violation of the constitutional right to an impartial jury so long as the jury that sits is impartial, and the defendant did not show that an incompetent juror was forced to sit on the jury. Mettetal v. State, 615 So. 2d 600, 1993 Miss. LEXIS 96 (Miss. 1993).

A murder defendant was not denied a fair trial on the ground that the trial court refused to accept his challenges for cause to 3 potential jurors where the defendant used peremptory challenges to remove those jurors, since the loss of a peremptory challenge does not constitute a violation of the constitutional right to an impartial jury; so long as the jury that sits is impartial, the fact that the defendant had to use peremptory challenges to achieve that result does not mean that the defendant was denied his or her constitutional rights. Mettetal v. State, 602 So. 2d 864, 1992 Miss. LEXIS 413 (Miss. 1992).

A prerequisite to presentation of a claim of a denial of constitutional rights due to denial of a challenge for cause is a showing that the defendant had exhausted all of his or her peremptory challenges and that the incompetent juror was forced to sit on the jury due to the trial court's erroneous ruling. Mettetal v. State, 602 So. 2d 864, 1992 Miss. LEXIS 413 (Miss. 1992).

The denial of a challenge for cause is not error where it is not shown that the defense has exhausted peremptory challenges and is thus forced to accept the juror. Thus, a trial court's refusal to remove 6 jurors for cause did not deprive the defendant of a fair trial where only one of the 6 actually served on the jury and she was not challenged at a time when the defense had 12 peremptory challenges, the defense still had one challenge left as well as an alternate challenge at the completion of the selection process, and the defense counsel never raised any objection to the other 5 jurors. Berry v. State, 575 So. 2d 1, 1990 Miss. LEXIS 849 (Miss. 1990), cert. denied, 500 U.S. 928, 111 S. Ct. 2042, 114 L. Ed. 2d 126, 1991 U.S. LEXIS 2673 (U.S. 1991).

In a capital murder prosecution, the court's failure to excuse for cause a potential juror who stated during voir dire that in order for him not to impose the death penalty the defendant would have to prove beyond a reasonable doubt that he should not be executed, was not reversible error where defense counsel used his twelfth peremptory challenge to remove the juror, defense counsel had not exhausted his peremptory challenges and did not challenge anyone else for cause or ask for more peremptory challenges. Minnick v. State, 551 So. 2d 77, 1988 Miss. LEXIS 612 (Miss. 1988), rev'd, 498 U.S. 146, 111 S. Ct. 486, 112 L. Ed. 2d 489, 1990 U.S. LEXIS 6118 (U.S. 1990), overruled, Willie v. State, 585 So. 2d 660, 1991 Miss. LEXIS 454 (Miss. 1991).

Defendant cannot lawfully complain of the action of the court in sustaining a challenge to a juror by the state for cause. Smith v. State, 103 Miss. 356, 60 So. 330, 1912 Miss. LEXIS 179 (Miss. 1912).

15. Review.

Although defendant argued the circuit court erred in instructing potential jurors regarding the fact that defendant was 14 years old at the time he was accused of murder, the circuit court was bound by Miss. Code Ann. § 13-5-79 to exclude potential jurors who stated they would be influenced by defendant's age and could not try the case impartially. Evans v. State, 109 So. 3d 1056, 2011 Miss. App. LEXIS 343 (Miss. Ct. App. 2011), rev'd, 109 So. 3d 1044, 2013 Miss. LEXIS 31 (Miss. 2013).

Trial court did not abuse its discretion when it dismissed two jurors for cause based on the prosecution's representation that the jurors were under investigation by a grand jury because defendant's claim of error was procedurally barred by Miss. Code Ann. § 13-5-79, which provided that where the trial court was of the opinion that the prospective juror could not try the case impartially, the exclusion would not be assignable for error. Defendant failed to cite any authority for his proposition that the trial court's acceptance of the representations of the prosecutor as to the two jurors was an abuse of discretion; and the trial court properly recognized that matters that have been or would be presented to the grand jury are uniquely known to the prosecutor. Burnside v. State, 912 So. 2d 1018, 2005 Miss. App. LEXIS 204 (Miss. Ct. App.), cert. denied, 921 So. 2d 344, 2005 Miss. LEXIS 679 (Miss. 2005).

The defendant was barred from challenging the trial court's dismissal of a venire member who heard impermissible comments made by another venire member, but indicated that she could nevertheless keep a fair and open mind and render a fair verdict in the case, as the end result was a jury composed of fair and impartial jurors. Puckett v. State, 737 So. 2d 322, 1999 Miss. LEXIS 122 (Miss. 1999).

On appeal, a defendant may not challenge the dismissal of a juror for cause. Edwards v. State, 723 So. 2d 1221, 1998 Miss. App. LEXIS 959 (Miss. Ct. App. 1998).

Once a judge has exercised his or her discretion and determined that a juror probably could not be impartial, that determination may not be assigned on appeal as error. Coverson v. State, 617 So. 2d 642, 1993 Miss. LEXIS 168 (Miss. 1993).

In a burglary prosecution, although a prospective juror who expressed uncertainty as to her ability to be a fair juror because of her sympathy for the elderly victim should have been excused for cause, the error was harmless beyond a reasonable doubt where the defendant suffered no actual prejudice. Carr v. State, 555 So. 2d 59, 1989 Miss. LEXIS 505 (Miss. 1989).

Under statute, the excusing of prospective juror by trial judge, in exercise of discretion vested in him, is final. City of Jackson v. McFadden, 181 Miss. 1, 177 So. 755, 1937 Miss. LEXIS 130 (Miss. 1937).

After jury had been accepted, but before evidence is introduced, court may examine juror as to alleged disqualification not previously known, and if examination leaves juror's qualification in doubt, may stand him aside or sustain challenge for cause, and such action does not require reversal in absence of abuse of discretion. Sullivan v. State, 155 Miss. 629, 125 So. 115, 1929 Miss. LEXIS 354 (Miss. 1929).

Exclusion by court, of own motion, of juror who heard part of former trial held not reversible error. Barnett v. State, 146 Miss. 893, 112 So. 586, 1927 Miss. LEXIS 255 (Miss. 1927).

On appeal the finding of the circuit court as to a juror's qualifications is prima facie correct. Donahue v. State, 142 Miss. 20, 107 So. 15, 1926 Miss. LEXIS 55 (Miss. 1926).

The action of the court in setting aside a juror of its own motion is not assignable for error and neither is its action in sustaining a challenge on the ground that there is a criminal case pending against the challenged juror. Lewis v. State, 85 Miss. 35, 37 So. 497, 1904 Miss. LEXIS 129 (Miss. 1904).

It is nonreversible error to sustain the state's challenge of a juror for the cause that there was a criminal case pending against him in the courts, since if the court had set him aside of its own motion, it could not have been assigned for error. Lewis v. State, 85 Miss. 35, 37 So. 497, 1904 Miss. LEXIS 129 (Miss. 1904).

A finding by the trial court on motion for a new trial that a juror was not hostile to the accused will not be reversed where the testimony on the subject is conflicting. Schrader v. State, 84 Miss. 593, 36 So. 385, 1904 Miss. LEXIS 41 (Miss. 1904).

RESEARCH REFERENCES

ALR.

Admissibility in civil case of affidavit or testimony of juror in support of verdict attacked on ground of bias or disqualification of juror. 30 A.L.R.2d 914.

Admissibility, in civil case, of juror's affidavit or testimony to show bias, prejudice, or disqualification of a juror not disclosed on voir dire examination. 48 A.L.R.2d 971.

Racial, religious, economic, social, or political prejudice of proposed juror as subject of inquiry or ground of challenge in criminal case. 54 A.L.R.2d 1204.

Religious belief as ground for exemption or excuse from jury service. 2 A.L.R.3d 1392.

Beliefs regarding capital punishment as disqualifying juror in capital case – post-Witherspoon cases. 39 A.L.R.3d 550.

Cure of prejudice resulting from statement by prospective juror during voir dire, in presence of other prospective jurors, as to defendant's guilt. 50 A.L.R.4th 969.

Use of peremptory challenges to exclude Caucasian persons, as a racial group, from criminal jury–post-Batson state cases. 47 A.L.R.5th 259.

Am. Jur.

2 Am. Jur. Proof of Facts, Bias or Prejudice, Proof No. 1 (bias or prejudice – of juror).

CJS.

50 C.J.S., Juries §§ 390-402, 357-364.

Law Reviews.

1978 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 59, March 1979.

§ 13-5-81. Challenge to array; quashing of venire.

A challenge to the array shall not be sustained, except for fraud, nor shall any venire facias, except a special venire facias in a criminal case, be quashed for any cause whatever.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 10 (1); 1857, ch. 61, art. 142; 1871, § 743; 1880, § 1694; 1892, § 2387; 1906, § 2716; Hemingway's 1917, § 2209; 1930, § 2062; 1942, § 1796.

Cross References — Examination of jurors by attorneys or litigants, see § 13-5-69.

Criminal offense of bribing jurors, see § 97-9-5.

Peremptory challenges of jointly tried defendants, see § 99-17-5.

JUDICIAL DECISIONS

1. In general.

Under the Batson test, the prosecutor satisfied the burden of articulating a nondiscriminatory reason for striking a black juror where he explained that he struck the juror because the juror had long unkempt hair, a mustache and a beard, since the wearing of beards and long unkempt hair are not characteristics that are particular to any race. Purkett v. Elem, 514 U.S. 765, 115 S. Ct. 1769, 131 L. Ed. 2d 834, 1995 U.S. LEXIS 3181 (U.S. 1995).

In a prosecution for capital murder and conspiracy to commit capital murder, the trial court committed reversible error in failing to place the initial burden on the State to establish a prima facie case of racial discrimination in the defendant's use of his peremptory challenges, before concluding that the defendant failed to offer a race-neutral reason for challenging one of the jurors, since the defendant was arbitrarily and erroneously denied the use of one of his peremptory challenges, and the composition of the jury was directly altered as a result. Colosimo v. Senatobia Motor Inn, 662 So. 2d 552, 1995 Miss. LEXIS 479 (Miss. 1995).

A prosecutor's race-neutral explanation for peremptorily striking a potential juror need not rise to the level of justifying the exercise of a challenge for cause. Davis v. State, 660 So. 2d 1228, 1995 Miss. LEXIS 287 (Miss. 1995), cert. denied, 517 U.S. 1192, 116 S. Ct. 1684, 134 L. Ed. 2d 785, 1996 U.S. LEXIS 3101 (U.S. 1996).

In a capital murder prosecution in which a black defendant was convicted and sentenced by an all-white jury for the murders of 4 white victims, the trial court did not err by allowing the State to peremptorily strike the sole potential black juror, since the reason stated by the prosecution for the peremptory challenge-that the juror indicated she would have difficulty finding suitable child care during the trial-was sufficiently race-neutral. Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

The trial court in a capital murder prosecution erred by not requiring the State to give racially-neutral reasons for exercising peremptory challenges against 7 out of 13 black jurors on the venire, even though there was no showing that the defendant was of a minority class, and therefore the case would be remanded for a hearing on whether the Batson criteria were violated by the State's exercise of its peremptory challenges. Thorson v. State, 653 So. 2d 876, 1994 Miss. LEXIS 600 (Miss. 1994).

In a personal injury action against an automobile manufacturer arising out of a one-vehicle accident, the automobile manufacturer was not afforded the fair and impartial jury to which it was entitled where a substantial number of the jurors had in the past been represented by the attorney for the plaintiff, or had a family member who was represented by the attorney; due to the number of persons on the venire and the jury who had been represented by the plaintiff's attorney or whose family members had been clients of the attorney, there was a "statistical aberration" in the make-up of the venire and the jury, so that the opportunity for these jurors to exercise their influence over the remainder of the jury was too great a risk to be taken. Toyota Motor Corp. v. McLaurin, 642 So. 2d 351, 1994 Miss. LEXIS 320 (Miss. 1994).

The reasons proffered by the State for using 5 of its 7 peremptory challenges against black jurors were sufficient to withstand a Batson challenge where the reasons given were (1) the juror had a brother in the penitentiary; (2) the juror had attended high school with the defendant; (3) the juror wore dark glasses in the courtroom; (4) the juror was employed in a company in which there had been a riot which was quelled by the police; and (5) the juror shared a last name with many persons in the penitentiary and the prosecutor believed he was related to an inmate, and the defense made no attempt to show that the reasons proffered were pretextual, of disparate impact, or not true. Henderson v. State, 641 So. 2d 1184, 1994 Miss. LEXIS 374 (Miss. 1994).

Some acceptable race-neutral reasons for challenging a juror are: (1) involvement in criminal activity; (2) unemployment; (3) employment history; (4) relative of juror involved in crime; (5) low income occupation; (6) juror wore gold chains, rings and watch; and (7) dress and demeanor. Foster v. State, 639 So. 2d 1263, 1994 Miss. LEXIS 670 (Miss. 1994), cert. denied, 514 U.S. 1019, 115 S. Ct. 1365, 131 L. Ed. 2d 221, 1995 U.S. LEXIS 2061 (U.S. 1995).

The State's reasons for using 4 of its 5 peremptory challenges against black jurors were sufficiently race-neutral where the first juror had a pending civil lawsuit, the second juror had worked with a defense witness and the prosecution objected to his age and demeanor, the third juror had previously sat on 2 criminal juries which resulted in one "not guilty" verdict and one mistrial, and the prosecutor was unable to make eye contact with the fourth juror while the juror continuously made eye contact with the defendant. Harper v. State, 635 So. 2d 864, 1994 Miss. LEXIS 201 (Miss. 1994), limited, Flowers v. State, 947 So. 2d 910, 2007 Miss. LEXIS 24 (Miss. 2007).

A trial judge is required to make an on-the-record factual determination that each reason proffered by the State for exercising a peremptory challenge is, in fact, race neutral; this requirement is to be prospective in nature. Hatten v. State, 628 So. 2d 294, 1993 Miss. LEXIS 522 (Miss. 1993).

The State successfully rebutted a black defendant's Batson challenge to the

State's exercise of peremptory challenges to eliminate four black venire members where 2 of the venire members were challenged because they were of an age to be employed and had no occupation, and the other 2 were challenged because they were acquainted with the defendant or her family. Porter v. State, 616 So. 2d 899, 1993 Miss. LEXIS 115 (Miss. 1993).

The Batson rule applies to both a prosecutor's and a defendant's peremptory challenges. Griffin v. State, 610 So. 2d 354, 1992 Miss. LEXIS 749 (Miss. 1992).

A defendant may make a prima facie showing of purposeful racial discrimination in selection of the venire by relying solely on the facts concerning its selection in the defendant's case; a defendant may establish a prima facie case of purposeful discrimination in selection of the jury solely on evidence concerning the prosecutor's exercise of peremptory challenges at the defendant's trial. Griffin v. State, 607 So. 2d 1197, 1992 Miss. LEXIS 603 (Miss. 1992).

A white defendant had standing to object to the State's use of 5 of its 6 peremptory challenges to strike black jurors; however, the defendant failed to establish a prima facie case of discrimination where the State offered race neutral reasons for striking each individual black juror and the defendant's attorney offered no evidence to rebut the State's reasons for striking the jurors. Green v. State, 597 So. 2d 656, 1992 Miss. LEXIS 206 (Miss. 1992).

A defendant failed to establish a prima facie case of racial discrimination in jury selection, even though the defendant was black and the prosecution exercised preemptory challenges to eliminate 3 black jurors, where the jurors were excluded because they were acquainted with the defendant; while excluding jurors on the ground that they were acquainted with the defendant might have had a discriminatory effect since the defendant's acquaintances were primarily black, the law does not proscribe the mere incidental exclusion of blacks from a jury. Govan v. State, 591 So. 2d 428, 1991 Miss. LEXIS 836 (Miss. 1991).

A county's jury venire selection did not systematically exclude blacks in violation of a black defendant's constitutional equal protection rights, even though there were only 2 blacks out of 12 on the jury which rendered a verdict against the defendant when 37 percent of the county was black, where the jury selection was based upon voter registration lists of the county without regard to race. Harris v. State, 576 So. 2d 1262, 1991 Miss. LEXIS 121 (Miss. 1991).

The reasons given by a district attorney for exercising a peremptory challenge to excuse a black juror were sufficiently race-neutral where the district attorney stated that the juror was a truck driver "which may or may not mean he's a transient," the juror wore overalls with a black T-Shirt in the courtroom, and he was unmarried and did not have children "which shows that he doesn't have a stake in the community like somebody that's established." Bradley v. State, 562 So. 2d 1276, 1990 Miss. LEXIS 267 (Miss. 1990).

A murder defendant's argument that the jury was patently flawed because the jury was white and the defendant was black was without merit. The mere fact that a jury is white and a defendant is black does not violate Batson, but rather it is the racially discriminatory exercise of peremptory challenges to strike black jurors from the jury that violates the Batson rule. Sudduth v. State, 562 So. 2d 67, 1990 Miss. LEXIS 235 (Miss. 1990).

A defendant's motion to quash the array of jurors was properly denied where nothing in the record indicated that the sheriff, his deputies, or any other person tampered with the jury or purposely evaded serving jurors in order to stack the jury, even though 100 jurors were summoned and 53 of them were not found or marked "out of the county." Avery v. State, 555 So. 2d 1039, 1990 Miss. LEXIS 7 (Miss. 1990), overruled, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

No prima facie case of racial discrimination was shown in the prosecution's use of peremptory challenges, even though the prosecutor exercised 5 of his 7 peremptory challenges against black jurors, where the victim of the crime charged and the defendant were black, the prosecutor and the defendant had several challenges left, numerous potential black jurors were left uncalled, and one black juror was in the jury box. Dennis v. State, 555 So. 2d 679, 1989 Miss. LEXIS 465 (Miss. 1989).

A murder defendant was not denied a fair trial by virtue of the fact that 9 of the 42 members of the regular and special venire panels had relatives who had been murdered where 7 of the members of the venire who had had relatives murdered did not serve on the jury and the defense had sufficient peremptory challenges remaining to remove the other 2 jurors if they so desired. Shell v. State, 554 So. 2d 887, 1989 Miss. LEXIS 492 (Miss. 1989), rev'd, in part, 498 U.S. 1, 111 S. Ct. 313, 112 L. Ed. 2d 1, 1990 U.S. LEXIS 5501 (U.S. 1990).

After the State has supplied a neutral nonracial explanation for peremptory challenges, in the absence of an actual proffer of evidence by the defendant concerning this issue, the Supreme Court may not reverse on this point. It is incumbent upon the defendant to come forward with proof when given the opportunity for rebuttal. Davis v. State, 551 So. 2d 165, 1989 Miss. LEXIS 364 (Miss. 1989), cert. denied, 494 U.S. 1074, 110 S. Ct. 1796, 108 L. Ed. 2d 797, 1990 U.S. LEXIS 1741 (U.S. 1990).

A plaintiff in a medical malpractice case was denied her right to an impartial jury where there were over 40,000 persons in the county from which a jury could have been drawn and the plaintiff was limited to a jury pool of 25, 48 percent of which were connected in some way to the defendant doctor, because of the "statistical aberration" of the makeup of the venire and the strong likelihood that the opportunity for undue influence over other jurors in the case was too great. Hudson v. Taleff, 546 So. 2d 359, 1989 Miss. LEXIS 299 (Miss. 1989).

A defendant established a prima facie case of purposeful discrimination in the selection of a petit jury where he showed that he was a black person and that the district attorney had exercised peremptory challenges to remove 5 black persons from the jury. The fact that the prosecution used all of the peremptory strikes necessary to remove all but one black person from the jury satisfied the requirement of raising an inference of racial discrimination. Conerly v. State, 544 So. 2d 1370, 1989 Miss. LEXIS 265 (Miss. 1989).

When a criminal defendant establishes a prima facie case of the impermissible exclusion of black jurors through the use of peremptory challenges, the burden of proof shifts to the state to come forward with a racially neutral explanation for each of the challenges that must be related to the particular case being tried. Dedeaux v. State, 519 So. 2d 886, 1988 Miss. LEXIS 48 (Miss. 1988).

The provisions of the law in regard to the listing, drawing, summoning or impaneling of juries are directory merely. Smith v. State, 242 Miss. 728, 137 So. 2d 172, 1962 Miss. LEXIS 586 (Miss. 1962).

The trial court did not commit reversible error in overruling defendant's motion for a mistrial, or that a new panel of jurors be tendered to the defendant, where, after ten jurors had been finally accepted to try the defendant for murder, the court, out of the presence of defendant or his counsel, excused one of the jurors because illness required the juror's presence at home, where the court had allowed the defendant one additional peremptory challenge. Upshaw v. State, 231 Miss. 158, 94 So. 2d 337, 1957 Miss. LEXIS 500 (Miss. 1957).

In prosecution for contributing to delinquency of minor under 18 years of age, failure to quash jury panel is not error when trial judge in sentencing defendant in case immediately preceding trial of defendant, involving similar circumstances, stated as reason for imposing fine and jail sentence that he was interested in protection of boys and girls, though statement was in presence of prospective jurors, since degree of punishment is matter with which trial jury has no concern. Broadstreet v. State, 208 Miss. 789, 45 So. 2d 590, 1950 Miss. LEXIS 299 (Miss. 1950).

Special venire will not be set aside merely because sheriff did not follow court's recommended procedure in selecting panel where time was short and a fair and impartial panel was summoned. Riley v. State, 208 Miss. 336, 44 So. 2d 455, 1950 Miss. LEXIS 252 (Miss. 1950).

Denial of motion to quash special venire in homicide prosecution against Negro defendant because under the voir dire examination there appeared only one member of the Negro race did not constitute error where there was no showing how many other, if any, Negroes were summoned and failed to respond. Patton v. State, 207 Miss. 120, 40 So. 2d 592, 1949 Miss. LEXIS 322 (Miss.), cert. denied, 338 U.S. 855, 70 S. Ct. 104, 94 L. Ed. 523, 1949 U.S. LEXIS 1796 (U.S. 1949).

Special venire will not be quashed except for fraud or total departure from procedure laid down. Moon v. State, 176 Miss. 72, 168 So. 476, 1936 Miss. LEXIS 127 (Miss. 1936); Riley v. State, 208 Miss. 336, 44 So. 2d 455, 1950 Miss. LEXIS 252 (Miss. 1950).

Motion to quash special venire on ground that it should have been summoned from new jury list held properly overruled where new list had been in jury box less than thirty days before special venire was granted and trial had. Moon v. State, 176 Miss. 72, 168 So. 476, 1936 Miss. LEXIS 127 (Miss. 1936).

Where trial was had during second week of term, overruling defendant's motion to quash jury panel summoned for first week held harmless. Mississippi & S. V. R. Co. v. Brown, 160 Miss. 123, 132 So. 556, 1931 Miss. LEXIS 124 (Miss. 1931).

Panel should not be quashed except for fraud and unless there was total departure from course described by statute. Harris v. State, 155 Miss. 794, 125 So. 253, 1929 Miss. LEXIS 359 (Miss. 1929).

No one of the twelve jurors can impeach the verdict where the verdict was reached by only nine. Ulmer v. Pistole, 115 Miss. 485, 76 So. 522, 1917 Miss. LEXIS 222 (Miss. 1917).

The testimony must show that fraud was committed or flagrant violations of the jury laws that constitute fraud in law before the court is authorized to quash a jury box. Cook v. State, 90 Miss. 137, 43 So. 618, 1907 Miss. LEXIS 84 (Miss. 1907).

The venire in a criminal case will not be quashed because the jury was not drawn from the legal box prepared by the board of supervisors. Campbell v. State, 17 So. 441 (Miss. 1895).

RESEARCH REFERENCES

ALR.

Bias, prejudice, or conduct of individual member of jury panel as ground for challenge to entire panel. 76 A.L.R.2d 678.

Age group underrepresentation in grand jury or petit jury venire. 62 A.L.R.4th 859.

Am. Jur.

47 Am. Jur. 2d, Jury §§ 191- 199.

8 Am. Jur. Pl & Pr Forms (Rev), Criminal Procedure, Form 264 (challenge to panel of jurors).

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Forms 151-166 (challenges to array).

CJS.

50 C.J.S., Juries §§ 357-364.

§ 13-5-83. Intoxicated jurors; jurors under the control of the court.

If any juror summoned to appear at court, should render himself unfit for service by intoxication before his name is called in court, he shall be fined in a sum not exceeding One Hundred Dollars ($100.00), and be imprisoned for a term not exceeding twenty-four hours. After grand and petit jurors are impaneled they shall be under the control of the court, and, for any breach of duty or contempt of court, may be fined and imprisoned.

HISTORY: Codes, 1871, § 752; 1880, § 1696; 1892, § 2388; 1906, § 2717; Hemingway's 1917, § 2210; 1930, § 2063; 1942, § 1797.

Cross References — Sheriffs, bailiffs, or other officers not being in room or conversing with a retired jury, see § 11-7-149.

Criminal offense of officer being guilty of habitual drunkenness, see § 97-11-23.

JUDICIAL DECISIONS

1. In general.

In prosecution for rape, new trial was not required by fact that during progress of trial, two jurors were inadvertently separated from the others for a period of approximately 15 or 20 minutes, where there was no suggestion that the separated jurors were contacted by anyone. Lampley v. State, 291 So. 2d 707, 1974 Miss. LEXIS 1736 (Miss. 1974).

No new trial was warranted on grounds that a deputy sheriff without court authorization drove a bus and ate in the same room with the jurors where the deputy did not testify as a witness in the case on its merits, he did not even appear in the courtroom at any time in the course of the trial, his function was to assist in the process of making it possible for the jurors to eat, his only activity was to respond to the sheriff's direction that he drive the members of the jury, together with the two bailiffs, to the restaurant in the bus, and at all times complained of the jurors were in the protective custody of the bailiff; however, it would have been better policy for the bus driver to receive in open court detailed instructions from the trial judge in the presence of jurors, bailiffs, counsel, and the defendant. Bickcom v. State, 286 So. 2d 823, 1973 Miss. LEXIS 1324 (Miss. 1973).

A conversation between a juror and a material witness in a prosecution, the witness being a deputy sheriff and jailer, and having served as a courtroom deputy, just after the witness had testified for the state, was reversible error, where the defendant had, prior to the introduction of evidence, moved the court to direct police officers, including the instant witness, to remove themselves from close proximity to the jury box, and had moved for a mistrial immediately after the observed conversation, both of which requests were denied. Perkins v. State, 244 So. 2d 414, 1971 Miss. LEXIS 1336 (Miss. 1971).

Undue pressure upon jury to reach verdict is not shown by fact that court ordered jury to retire to jury room at 6 p. m. and kept them in room until almost 8 p. m., without supper, or without asking them if they desired supper, where record is silent as to existence of any of the facts upon which this contention is predicated. Broadstreet v. State, 208 Miss. 789, 45 So. 2d 590, 1950 Miss. LEXIS 299 (Miss. 1950).

One who attempts to bribe or influence decision of juror is guilty of contempt of court, regardless of whether act which constitutes contempt is committed in or out of presence of court, or whether juror is actually sworn on particular case or is only member of panel from which trial jury is to be selected. Jones v. State, 208 Miss. 762, 45 So. 2d 576, 1950 Miss. LEXIS 294 (Miss. 1950).

Person is guilty of contempt of court when he approaches prospective juror, who has been summoned for trial of murder case, at juror's home and advises juror that there are some things in favor of defendant that court will not permit to go to jury, that deceased had been running over defendant, but that fact would be kept from jury and if it wasn't brought out juror should give defendant a break. Jones v. State, 208 Miss. 762, 45 So. 2d 576, 1950 Miss. LEXIS 294 (Miss. 1950).

Inquiries or requests made of bailiff by jury after it has retired to consider case should be reported to trial judge, and bailiff should never give opinion about anything involved in case. Passons v. State, 208 Miss. 545, 45 So. 2d 131, 1950 Miss. LEXIS 273 (Miss. 1950), overruled, Simmons v. State, 568 So. 2d 1192, 1990 Miss. LEXIS 605 (Miss. 1990).

No meddling with, or intent to influence, jury is shown which could cause any harm by fact that after jury had retired for deliberation, one asked bailiff if judge would further instruct them if liquor had any legal property value, bailiff stated that he did not think judge would give further instructions and that jury had their instructions, and door was shut and jury said nothing further. Passons v. State, 208 Miss. 545, 45 So. 2d 131, 1950 Miss. LEXIS 273 (Miss. 1950), overruled, Simmons v. State, 568 So. 2d 1192, 1990 Miss. LEXIS 605 (Miss. 1990).

The mere fact that a jury in a capital case was allowed to separate because of sickness is held to be no ground for a new trial. Haley v. State, 123 Miss. 87, 85 So. 129, 1920 Miss. LEXIS 8 (Miss. 1920).

It is not error for a jury to be retired pending argument to the court on the competency of a witness. Lewis v. State, 85 Miss. 35, 37 So. 497, 1904 Miss. LEXIS 129 (Miss. 1904).

RESEARCH REFERENCES

ALR.

Indoctrination by court of persons summoned for jury service. 89 A.L.R.2d 197.

Admissibility, in civil case, of juror's affidavit or testimony relating to juror's misconduct outside jury room. 32 A.L.R.3d 1356.

Holding jurors in contempt under state law. 93 A.L.R.5th 493.

Am. Jur.

15 Am. Jur. Pl & Pr Forms (Rev), Jury, Form 121 (order of attachment of defaulting juror – failure to serve as juror); Form 122 (order for defaulting juror to show cause); Form 123 (order convicting defaulting juror of contempt).

24 Am. Jur. Proof of Facts 2d 633, Jury Misconduct Warranting New Trial.

§ 13-5-85. Selection of and service on juries in Harrison County.

In Harrison County, a county having two judicial districts, the law in relation to the selection and liability to jury service of grand and petit juries shall be applicable to each of the two judicial districts of the county in the same manner as if each district were a separate county, so far as the same may be made to apply. No person shall be made to serve as a grand or petit juror except in the district in which he resides. Lists of persons subject and liable to jury duty shall be made and grand and petit jurors shall be selected and empaneled in each of said districts in the same manner as if each were a separate county, except in such cases where it is otherwise provided by law.

HISTORY: Codes, 1942, § 2910-08; Laws, 1962, ch. 257, § 8, eff. from and after passage (approved June 1, 1962).

§ 13-5-87. Laws as to listing, drawing, summoning and impaneling of juries are directory.

All the provisions of law in relation to the listing, drawing, summoning and impaneling juries are directory merely, and a jury listed, drawn, summoned or impaneled, though in an informal or irregular manner, shall be deemed a legal jury after it shall have been impaneled and sworn, and it shall have the power to perform all the duties devolving on the jury.

HISTORY: Codes, 1857, ch. 64, art. 250; 1871, § 2843; 1880, § 1672; 1892, § 2389; 1906, § 2718; Hemingway's 1917, § 2211; 1930, § 2064; 1942, § 1798.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Irregularities cured by statute.
3. Defects and errors not cured.
4. Review.
5. Prayer prior to jury venire.

1. In general.

Trial court did not abuse its discretion in denying a doctor's motion to quash the jury panel—when the doctor contended that the doctor was denied a fair trial in a medical malpractice action because the doctor, who was Caucasian, had an all-African-American venire in a county that was 25 percent Caucasian—because the appellate court found no evidence showing any actual fraud, prejudice, or such a flagrant violation of duty as to amount to fraud. Kronfol v. Johnson, — So. 3d —, 2019 Miss. App. LEXIS 183 (Miss. Ct. App. Apr. 30, 2019).

Misallocation of defendant's peremptory challenges did not affect a fundamental, substantive right because so long as the jury that sat was impartial, the fact that defendant had to pool his regular and alternate peremptory challenges to achieve that result did not mean his Sixth Amendment rights were violated; despite being selected in an irregular manner, the jury was a legal jury with the authority to render a verdict against defendant. Carr v. State, 190 So. 3d 1, 2015 Miss. App. LEXIS 605 (Miss. Ct. App. 2015).

Trial judge's questioning of circuit clerk established that clerk had complied, or substantially complied, with statute with respect to random selection of jurors to try defendant charged with attempting to obtain controlled substance by misrepresentation or fraud. Griffin v. State, 494 So. 2d 376, 1986 Miss. LEXIS 2651 (Miss. 1986).

In a prosecution for robbery by assault, there was no reversible error in impaneling the juries where the system used consisted of a court administrator's shuffling information cards filled out by prospective jurors and arranging those cards in groups of 12, with the groups designated as Juries 1, 2 and 3. Harris v. State, 406 So. 2d 823, 1981 Miss. LEXIS 2437 (Miss. 1981).

The method of selecting a jury is ordinarily within the sound judicial discretion of the trial judge, except in those circumstances where the jury selection method is set forth by statute. Peters v. State, 314 So. 2d 724, 1975 Miss. LEXIS 1683 (Miss.), cert. denied, 423 U.S. 1019, 96 S. Ct. 457, 46 L. Ed. 2d 392, 1975 U.S. LEXIS 3639 (U.S. 1975).

It was within the sound discretion of the trial judge as to how many jurors would be submitted to the litigant for their voir dire. Bright v. State, 293 So. 2d 818, 1974 Miss. LEXIS 1814 (Miss. 1974).

The statutory method of selecting a jury is discretionary and not mandatory. Henry v. State, 209 So. 2d 614, 1968 Miss. LEXIS 1454 (Miss. 1968).

Considered as a whole, the statutes providing for the selection of jurors are not void for vagueness. Reed v. State, 199 So. 2d 803, 1967 Miss. LEXIS 1309 (Miss. 1967), cert. denied, 390 U.S. 413, 88 S. Ct. 1113, 19 L. Ed. 2d 1273, 1968 U.S. LEXIS 2174 (U.S. 1968).

The jury laws of Mississippi are directory and the selection of the jury list in an informal or irregular manner does not render it illegal. Shinall v. State, 199 So. 2d 251, 1967 Miss. LEXIS 1290 (Miss.), cert. denied, 389 U.S. 1014, 88 S. Ct. 590, 19 L. Ed. 2d 660, 1967 U.S. LEXIS 27 (U.S. 1967), overruled, Flowers v. State, 473 So. 2d 164, 1985 Miss. LEXIS 2140 (Miss. 1985).

The jury laws are merely directory, and a jury drawn informally or in an irregular manner is legal "after it shall have been impaneled and sworn." Ladner v. State, 197 So. 2d 257, 1967 Miss. LEXIS 1524 (Miss. 1967).

The provisions of the law in regard to the listing, drawing, summoning or impaneling of juries are directory merely. Smith v. State, 242 Miss. 728, 137 So. 2d 172, 1962 Miss. LEXIS 586 (Miss. 1962); Williams v. State, 220 So. 2d 325, 1969 Miss. LEXIS 1455 (Miss. 1969).

Petitioner's allegation in an application for writ of habeas corpus that his conviction constituted a deprivation of his liberty without due process of law in violation of the Fourteenth Amendment of the

United States Constitution because of the systematic exclusion of members of his race from the lists from which grand and petit juries were selected in the county where he was indicted ad convicted, and that because of his ignorance and circumstances of his arrest and incarceration, and as a consequence of the law of Mississippi, he was not able to challenge the competency of the grand jury, together with a showing of the speed in which the petitioner was tried following his indictment, were sufficient to entitle the petitioner to a hearing on the question of whether he had adequately safeguarded his constitutional rights during his trial for murder. United States ex rel. Goldsby v. Harpole, 249 F.2d 417, 1957 U.S. App. LEXIS 4002 (5th Cir. Miss. 1957).

Since the laws with reference to the impaneling of jurors are directory, the trial court did not commit reversible error in overruling defendant's motion for a mistrial, or that a new panel be tendered him, where, after ten jurors had been finally accepted to try defendant for murder, the court, out of the presence of the defendant or his counsel, excused a juror because illness required the juror's presence at home, but allowed defendant one additional peremptory challenge. Upshaw v. State, 231 Miss. 158, 94 So. 2d 337, 1957 Miss. LEXIS 500 (Miss. 1957).

A Negro convicted of feloniously receiving stolen property was not entitled to a new trial upon the ground of unproven allegations of prejudice against members of his race by the jurors trying him, where no objection had been made to the qualifications of the jurors before the jury had been impaneled and sworn. Walker v. State, 229 Miss. 540, 91 So. 2d 548, 1956 Miss. LEXIS 638 (Miss. 1956).

This section [Code 1942, § 1798] in relation to the listing, drawing, summoning, and impaneling of juries is directory merely and not mandatory. Wiggins v. State, 224 Miss. 414, 80 So. 2d 17, 1955 Miss. LEXIS 505 (Miss. 1955).

The trial court in a prosecution for murder did not err in denying defendant's motion to quash a jury panel for the reason that the names of the jurors in the compartment of the jury box representing a particular supervisor's district had been exhausted and the jury was selected from other supervisors' districts. Wiggins v. State, 224 Miss. 414, 80 So. 2d 17, 1955 Miss. LEXIS 505 (Miss. 1955).

Where the statute provides that not less than twenty names nor more than forty names are to be drawn for a jury box for each week of county term, the statute is mandatory as to the minimum number but only directory as to the maximum number. Adams v. State, 220 Miss. 812, 72 So. 2d 211, 1954 Miss. LEXIS 500 (Miss. 1954).

Where the statute provides that a maximum of forty names should be drawn from the jury box for week of term, a defendant was not prejudiced by the drawing of sixty names. Adams v. State, 220 Miss. 812, 72 So. 2d 211, 1954 Miss. LEXIS 500 (Miss. 1954).

Under this section [Code 1942, § 1798] jury laws are directory and not mandatory and case will not be reversed unless there is radical departure from statutory scheme of summoning and impaneling juries. Kouvarakis v. Hawver, 208 Miss. 697, 45 So. 2d 278, 1950 Miss. LEXIS 288 (Miss. 1950).

Motion to quash indictment against Negro on ground that there were no Negro names listed or placed in jury box from which grand jury was drawn is properly overruled when it appears that there were only two Negroes in the county who were qualified electors and who could have served on either grand or petit juries at time juries were impaneled. Flowers v. State, 209 Miss. 86, 41 So. 2d 352, 1949 Miss. LEXIS 473 (Miss. 1949), cert. denied, 339 U.S. 946, 70 S. Ct. 800, 94 L. Ed. 1360, 1950 U.S. LEXIS 2045 (U.S. 1950).

Manner in which lists of jurors is selected by board of supervisors and placed in jury box involves solely question of state procedure and trial court is not in error in overruling motion to quash indictment on that ground when objections to qualification of grand jurors is not made before they are impaneled and defendant was at time represented by able lawyer and had reason to believe his case would be investigated by grand jury and he could have obtained information as to venire from which grand jury would be drawn. Flowers v. State, 209 Miss. 86, 41 So. 2d

352, 1949 Miss. LEXIS 473 (Miss. 1949), cert. denied, 339 U.S. 946, 70 S. Ct. 800, 94 L. Ed. 1360, 1950 U.S. LEXIS 2045 (U.S. 1950).

It is duty of circuit and chancery clerks, board of supervisors and sheriff to comply strictly with all of requirements of statutes in manner of listing, drawing and selecting jurors, compiling jury lists, and summoning and impaneling juries, but since statutes on the subject are merely directory, judgment will not be reversed where there was no radical departure from statutory scheme of selecting and impaneling jury and jury selected was fair and impartial. Lott v. State, 204 Miss. 610, 37 So. 2d 782, 1948 Miss. LEXIS 394 (Miss. 1948).

On motion to quash jury list from which grand and petit juries were to be chosen, for alleged reason that board of supervisors had not selected names of jurors in manner required by law governing selection of qualified electors, placing names in jury box, and subsequent drawing of juries, it is competent to show by testimony of chancery and circuit clerks manner in which statutory requirements were compiled with. Lott v. State, 204 Miss. 610, 37 So. 2d 782, 1948 Miss. LEXIS 394 (Miss. 1948).

Custom in selecting grand and petit jurors by clerks of circuit and chancery courts and the sheriff, pursuant to direction by a circuit judge, gathering together and taking slips out of the jury box and spreading them face up on a table so that they could see the names of the prospective jurors, and laying aside the names of those whom they did not think would make good jurors or who would be unable to serve, condemned as improper, since such action in effect constitutes a purging or revision of the board of supervisors' list regularly selected pursuant to law. Reynolds v. State, 199 Miss. 409, 24 So. 2d 781, 1946 Miss. LEXIS 211 (Miss. 1946).

This section [Code 1942, § 1798] and other statutory provisions relating to listing, drawing, summoning, and impaneling juries are directory merely, and jury listed, drawn, summoned, and impaneled in irregular manner constitutes legal jury after it has been impaneled and sworn. Wampold v. State, 170 Miss. 732, 155 So. 350, 1934 Miss. LEXIS 170 (Miss. 1934).

Statute declaring jury laws to be directory undertakes only to cure irregularities and defects in listing, drawing, summoning, and impaneling juries. Rhodman v. State, 153 Miss. 15, 120 So. 201, 1929 Miss. LEXIS 6 (Miss. 1929).

In view of the directory character of the jury laws, the court, where the public interest requires, has the power to reassemble the grand jury during the term. Haynes v. State, 93 Miss. 670, 47 So. 522 (Miss. 1908).

2. Irregularities cured by statute.

Even conceding that the trial judge should have adopted some other and different mode of procuring additional members for a grand jury, still, after the jury was sworn and impaneled, it was by the law deemed a legal jury, and any error of the court was cured by the express terms of the statute. Page v. Siemens Energy & Automation, Inc., 728 So. 2d 1075, 1998 Miss. LEXIS 507 (Miss. 1998).

Section 13-5-9 is directory only and the selection of a jury under the section does not render the jury illegal. Polk v. State, 288 So. 2d 452, 1974 Miss. LEXIS 1839 (Miss.), cert. denied, 419 U.S. 867, 95 S. Ct. 123, 42 L. Ed. 2d 104, 1974 U.S. LEXIS 2747 (U.S. 1974).

In the absence of a showing of fraud on the rights of the accused in a criminal case, it was not reversible error for the trial court to excuse from jury service, for good cause, before the case was called for trial and in chambers without notice to the accused, 26 of the 74 persons who appeared in response to an order for a special venire of 90 persons. Parker v. State, 201 Miss. 579, 29 So. 2d 910, 1947 Miss. LEXIS 423 (Miss. 1947).

The fact that the trial judge required inquires as to challenges for cause to be directed to eighteen men instead of twelve men did not make the impanelment of the jury improper. Smith v. State, 190 Miss. 24, 198 So. 562, 1940 Miss. LEXIS 180 (Miss. 1940).

Defendant in capital case not objecting to manner of drawing special venire at time of drawing, waived objection. Arnold v. State, 171 Miss. 164, 157 So. 247, 1934 Miss. LEXIS 217 (Miss. 1934).

Where regular jury box exhausted, drawing special venire from jury list prepared for succeeding year, held mere irregularity. Arnold v. State, 171 Miss. 164, 157 So. 247, 1934 Miss. LEXIS 217 (Miss. 1934).

Where regular jury panel was exhausted and the court directed the sheriff to fill the panel, which he did by summoning bystanders, rather than from the jury box, the court order not requiring this to be done, it was too late for defendant to complain of such procedure after the trial was over in view of the provisions of this section [Code 1942, § 1798]. Wampold v. State, 170 Miss. 732, 155 So. 350, 1934 Miss. LEXIS 170 (Miss. 1934).

Error, if any, in proceedings for making up grand jury list pursuant to order directing issuance of special venire facias held mere irregularity, cured when jury was impaneled and sworn. Nelson v. State, 160 Miss. 401, 133 So. 248, 1931 Miss. LEXIS 159 (Miss. 1931).

Error, if any, in not keeping jury box locked and sealed and prematurely preparing jury list was cured where jury was impaneled and sworn to try case in view of this section [Code 1942, § 1798]. Wells v. State, 160 Miss. 298, 133 So. 227, 1931 Miss. LEXIS 153 (Miss. 1931).

Where trial was had during second week of term, overruling defendant's motion to quash jury panel summoned for first week held harmless. Mississippi & S. V. R. Co. v. Brown, 160 Miss. 123, 132 So. 556, 1931 Miss. LEXIS 124 (Miss. 1931).

In homicide prosecution, where court ordered special venire from first district of county, refusal to order one from second district held not error, statutes being directory. Taylor v. State, 148 Miss. 621, 114 So. 390, 1927 Miss. LEXIS 48 (Miss. 1927).

The fact that the board of supervisors failed to select the jury from the districts in proportion to the qualified persons therein does not authorize the quashing of the venire in the absence of proof that the grand jury was composed of impartial and fair men. Atkinson v. State, 137 Miss. 42, 101 So. 490, 1924 Miss. LEXIS 195 (Miss. 1924).

In the absence of proof that the jury was not fair and impartial a mere irregularity in summoning the jury does not constitute reversible error. Ferguson v. State, 107 Miss. 559, 65 So. 584, 1914 Miss. LEXIS 118 (Miss. 1914).

After the impaneling of a grand jury certain members having been excused, the court directed that bystanders (designating them) serve as grand jurors, though such persons were not among those listed by the supervisors for jury service and though their names were not on the venire drawn for service during the term, defendant made no direct challenge and took no exception at the time. In the absence of any showing that the grand jury was not fair and impartial, there was no ground for reversal of a conviction on an indictment found by it. Posey v. State, 86 Miss. 141, 38 So. 324, 1905 Miss. LEXIS 35 (Miss. 1905).

If an impartial jury be obtained in a murder case the defendant cannot, after conviction, predicate error of an irregularity in drawing a special venire, the statutes on the subject being directory. Buchanan v. State, 84 Miss. 332, 36 So. 388, 1904 Miss. LEXIS 44 (Miss. 1904).

A special venire will not be quashed because the trial judge caused the sheriff to submit to him before the service of the writ the names of the deputies selected to execute it, that they might be shown to the attorneys in the case with a view of receiving objections to them, or because on objection by the state's attorney two of the persons named were not appointed, the sheriff appointing two unobjectionable persons in their place. If such a proceeding be irregular, it is cured by this section [Code 1942, § 1798], declaring that juries irregularly summoned shall be deemed legal after being impaneled and sworn. Lipscomb v. State, 76 Miss. 223, 25 So. 158, 1898 Miss. LEXIS 130 (Miss. 1898).

Where a special venire is ordered without application by the district attorney or defendant, it may be quashed on motion, but, after the jury is impaneled, the irregularity is cured by the statute. Gavigan v. State, 55 Miss. 533, 1878 Miss. LEXIS 5 (Miss. 1878).

3. Defects and errors not cured.

Although persons over 65 years of age and persons who have served on a jury within 2 years are exempt from jury service under § 13-5-25, neither the circuit court nor the deputy circuit clerk have authority to act unilaterally and strike such persons from the jury list. Such persons are eligible for jury service and have every lawful right and authority to serve if called and selected. When their names are drawn, such persons must be summoned the same as other prospective jurors and no one has authority to exempt any such juror from service unless he or she claims the privilege and asks to be excused. Thus, a judgment of conviction and sentence was reversed where the deputy circuit clerk unilaterally struck from the jury list all persons over 65 years of age and all persons who had served on a jury within the 2 preceding years. Adams v. State, 537 So. 2d 891, 1989 Miss. LEXIS 28 (Miss. 1989).

Statutory provision (Code 1942, § 1794) that if at any term of court it appears that there are not a sufficient number of jurors present to make a jury, the court shall immediately cause the proper number of jurors to be drawn from the jury box and summoned, and, if there be no jury box to be drawn from, the court shall direct the requisite number of persons, qualified as jurors, to be summoned to appear, is mandatory, and is not affected by this section [Code 1942, § 1798].J. J. W. Sanders Cotton Mills, Inc. v. Moody, 191 Miss. 604, 2 So. 2d 815, 1941 Miss. LEXIS 156 (Miss. 1941).

Where, in a personal injury action, only twelve jurors drawn from the jury box qualified, and, though there was a jury box from which to draw talesman, the tales-jurors were summoned by the constable at the direction of the court, the panel should have been quashed on motion of the defendant. J. W. Sanders Cotton Mills, Inc. v. Moody, 191 Miss. 604, 2 So. 2d 815, 1941 Miss. LEXIS 156 (Miss. 1941).

Where there was a total departure by the board of supervisors from the provisions of law in selecting a jury list, the jury list was illegal, and it was error, not cured by this section [Code 1942, § 1798], to make up the juries from such list. Ellis v. State, 142 Miss. 468, 107 So. 757, 1926 Miss. LEXIS 114 (Miss. 1926).

Refusal of the court to select the special venire from the jury boxes when properly requested by the defendant, is error not cured by this section [Code 1942, § 1798]. Lee v. State, 138 Miss. 474, 103 So. 233, 1925 Miss. LEXIS 102 (Miss. 1925).

Failure to have a jury sworn truly to try the issues between the state and the accused and render a true verdict, as distinguished from the oath on voir dire, prior to the reception of evidence, is not aided by this section [Code 1942, § 1798]. Miller v. State, 122 Miss. 19, 84 So. 161, 1920 Miss. LEXIS 415 (Miss. 1920).

4. Review.

Although the circuit court deviated from a legal rule in the manner in which it selected alternate jurors, there was no proof that the error was prejudicial to defendant. Consequently, the appellate court found no plain error in the manner in which jury was selected that would require reversal of defendant's fondling conviction. Giles v. State, — So. 3d —, 2019 Miss. App. LEXIS 294 (Miss. Ct. App. June 25, 2019).

Jury laws held directory; unless there is radical departure from statutory scheme of selecting juries, court will not reverse because trial court excused certain jurors for cause and filled their places with others. Sullivan v. State, 155 Miss. 629, 125 So. 115, 1929 Miss. LEXIS 354 (Miss. 1929); Harris v. State, 155 Miss. 794, 125 So. 253, 1929 Miss. LEXIS 359 (Miss. 1929).

Where unfairness in the method of securing jurors is shown, a substantial right of a litigant is invaded, and the supreme court will set aside the verdict of such a jury on timely objection being made, notwithstanding this section [Code 1942, § 1798]. Cook v. State, 90 Miss. 137, 43 So. 618, 1907 Miss. LEXIS 84 (Miss. 1907).

If a juror on his voir dire disclose facts which render him disqualified, a defendant who declines to object to him for that cause cannot, after verdict, in view of Code 1892 § 4370, (Code 1942, § 1987), complain of the disqualification. West v. State, 80 Miss. 710, 32 So. 298, 1902 Miss. LEXIS 313 (Miss. 1902).

The supreme court will not interfere with the discretion of the lower court in impaneling the jury unless it appear that there was a gross and injurious exercise of it. Head v. State, 44 Miss. 731, 1871 Miss. LEXIS 34 (Miss. 1871), overruled, Smith v. State, 58 Miss. 867, 1881 Miss. LEXIS 55 (Miss. 1881), overruled, Flowers v. State, 473 So. 2d 164, 1985 Miss. LEXIS 2140 (Miss. 1985).

5. Prayer prior to jury venire.

Although defendant argued that he was entitled to a mistrial based on the fact the trial judge opened courtroom with a prayer prior to jury venire, the trial court did not err in denying defendant's motion to quash the jury panel based on the prayer because defendant did not show how the prayer violated the jury-selection statute or resulted in fraud or prejudice. Young v. State, 264 So. 3d 797, 2018 Miss. App. LEXIS 423 (Miss. Ct. App. 2018), cert. denied, 263 So. 3d 666, 2019 Miss. LEXIS 80 (Miss. 2019).

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Jury § 104.

§ 13-5-89. Juries in condemnation proceedings.

In all cases where a jury is required in the exercise of the right of eminent domain, the sheriff and clerks of the circuit and chancery courts shall draw eighteen names from the jury box, and the slips containing the names shall be returned to the box. The sheriff shall summon the jury thus drawn, and the jurors shall attend, under the same penalties as in the circuit court, and the penalties may be enforced therein at the next term, on complaint of the proper party or of the sheriff.

HISTORY: Codes, 1892, § 2390; 1906, § 2719; Hemingway's 1917, § 2212; 1930, § 2065; 1942, § 1799.

Cross References — Summoning and impaneling of jurors for a special court of eminent domain, see §§ 11-27-11, 11-27-13.

Summoning of jurors to assess damages in proceedings to establish landings, see § 59-19-5.

RESEARCH REFERENCES

ALR.

Right to view by jury in condemnation proceedings. 77 A.L.R.2d 548.

How to obtain jury trial in eminent domain: waiver. 12 A.L.R.3d 7.

Am. Jur.

27 Am. Jur. 2d (Rev), Eminent Domain § 485, 486, 491.

CJS.

29A C.J.S., Eminent Domain §§ 560, 570, 577–579, 593, 594 et seq.

§ 13-5-91. Jury may view the place.

When, in the opinion of the court, on the trial of any cause, civil or criminal, it is proper, in order to reach the ends of justice, for the court and jury to have a view or inspection of the property which is the subject of litigation, or the place at which the offense is charged to have been committed, or the place or places at which any material fact occurred, or of any material object or thing in any way connected with the evidence in the case, the court may, at its discretion, enter an order providing for such view or inspection as is herein below directed. After such order is entered, the whole organized court, consisting of the judge, jury, clerk, sheriff, and the necessary number of deputy sheriffs, shall proceed, in a body, to such place or places, property, object or thing to be so viewed or inspected, which shall be pointed out and explained to the court and jury by the witnesses in the case, who may, at the discretion of the court, be questioned by the court and by the representative of each side at the time and place of such view or inspection, in reference to any material fact brought out by such view or inspection. The court on such occasion shall remain in session from the time it leaves the courtroom till it returns thereto, and while so in session outside the courtroom it shall have full power to compel the attendance of witnesses, to preserve order, to prevent disturbance and to punish for contempt such as it has when sitting in the courtroom. In criminal trials all such views or inspections must be had before the whole court and in the presence of the accused, and the production of all evidence from all witnesses or objects, animate or inanimate, must be in his presence.

HISTORY: Codes 1892, § 2391; 1906, § 2720; Hemingway's 1917, § 2213; 1930, § 2066; 1942, § 1800.

Cross References — Sheriffs, bailiffs, or other officers not being in room or conversing with a retired jury, see § 11-7-149.

Taking of view by jury in special court of eminent domain, see § 11-27-19.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application, generally.
3. Request for view.
4. Granting or refusing request for view.
5. Presence of accused.
6. Keeping jury together.
7. Proceedings at view.
8. Review.

1. Validity.

This section [Code 1942, § 1800] does not violate § 26 of the Constitution of 1890. Bailey v. State, 147 Miss. 428, 112 So. 594, 1927 Miss. LEXIS 294 (Miss. 1927).

2. Construction and application, generally.

Statute providing for view of premises must be interpreted so that view is allowable only when the necessity therefor in order to reach ends of justice bears some fair relation by way of equivalency, in that interest, to the right which otherwise would be unhampered and unimpaired to have verdict reviewed on record evidence. Great Atlantic & Pacific Tea Co. v. Davis, 177 Miss. 562, 171 So. 550, 1937 Miss. LEXIS 139 (Miss. 1937).

This statute [Code 1942, § 1800] is in derogation of common law and must be strictly followed. Jones v. State, 141 Miss. 894, 107 So. 8 (Miss. 1926).

A Court in viewing the place where the facts occurred must not go beyond the stipulation of the statute in moving from place to place and if it does so the presumption prevails that such conduct is harmful to defendant. Jones v. State, 141 Miss. 894, 107 So. 8 (Miss. 1926).

The court is authorized to repair to the place of the homicide after the judge has discharged the judicial function of making the order therefor, leaving the mere mechanical or ministerial act of spreading the order on the minutes to be afterwards performed by the clerk. McPherson v. State, 124 Miss. 361, 86 So. 854, 1920 Miss. LEXIS 520 (Miss. 1920).

3. Request for view.

A motion for a jury view should never have been made in the presence of the jury and the order should have been entered upon the minutes instead of merely being dictated into the record, but since no objections were made to any of the proceedings and apparently agreed thereto, there was no reversible error committed by the trial court. Mississippi State Highway Com. v. Williamson, 227 Miss. 580, 86 So. 2d 670, 1956 Miss. LEXIS 729 (Miss. 1956).

In a murder prosecution where there was a request to permit the jury to view the scene of the homicide and this request came more than a month after the occurrence of the crime and there was nothing to show that the condition at the scene of the homicide remained the same, the trial court did not err in refusing the request. Parnell v. State, 211 Miss. 100, 50 So. 2d 925, 1951 Miss. LEXIS 336 (Miss. 1951).

Where a party is about to make request for a view of premises by jury he must first request court to retire jury, and if such request is made in presence of jury judge should then and there overrule it without waiting for an objection from other side, and, if not immediately overruled, and if the other side does not immediately announce whether he will or will not join in the request, the judge should, of his own motion, retire the jury. Poteete v. Water Valley, 207 Miss. 173, 42 So. 2d 112, 1949 Miss. LEXIS 327 (Miss. 1949).

Motion to view and inspect must set out the grounds therefor with opportunity to adverse party to controvert and disprove them, and the granting, over objection, of such a motion which fails to set out any grounds or reasons therefor other than "in order to reach the ends of justice," constitutes reversible error, even though prior testimony taken on the merits showed justifiable reasons for such view and inspection. Leflore v. State, 196 Miss. 632, 18 So. 2d 132, 1944 Miss. LEXIS 244 (Miss. 1944).

Permitting counsel for plaintiff to renew motion for view of scene of accident, in jury's presence, was not reversible error, where opposing counsel had already reserved objection to such motion and hence did not have to renew objection. Mississippi Power Co. v. McCrary, 179 Miss. 427, 176 So. 165, 1937 Miss. LEXIS 46 (Miss. 1937).

Request for view of premises may be made orally, in absence of jury, and transcribed into court reporter's record, but request must state facts which show that view would be of essential aid, and, if other party objects or challenges facts, court must hear evidence or sworn statements touching those facts which must be reported in transcript. Great Atlantic & Pacific Tea Co. v. Davis, 177 Miss. 562, 171 So. 550, 1937 Miss. LEXIS 139 (Miss. 1937).

Request that view of the premises be had by the jury should not be made in the presence of the jury. National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

Request that view of premises be had by jury made in presence of jury should be overruled without objection from opposing litigant except where opposing litigant joins in request. National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

Refusal to retire jury after request whereby opposing litigant is forced to object to requirement that view of premises be had by jury is reversible error, whether or not view is made. National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

4. Granting or refusing request for view.

Trial judge was allowed pursuant to Miss. Code Ann. § 13-5-91 to determine at the judge's discretion whether the jury needed to view a particular crime scene – defendant's vehicle in this case – in order to reach the ends of justice; the judge decided against allowing the jury to view the truck and did so correctly. Smith v. State, 839 So. 2d 489, 2003 Miss. LEXIS 65 (Miss. 2003).

The trial court did not abuse its discretion in refusing to allow the jury to view the scene of the murder at issue, notwithstanding the assertion that a view was necessary for the jury to see the conditions under which a witness made her identification of the defendant; the defendant had the opportunity to cross-examine the witness about her ability to make an identification and stated at the pretrial hearing that he intended to present at least one witness who would give testimony that would contradict the witness's testimony that she was able to make an identification from the distance and under the lighting conditions that existed at the time of the crime. Lindsey v. State, 754 So. 2d 506, 1999 Miss. App. LEXIS 588 (Miss. Ct. App. 1999).

In a capital murder prosecution arising from the shooting death of a police officer, the trial court did not err in allowing the jury to view the officer's "shot-up" police vehicle where the vehicle was housed near the courthouse, the police car was in substantially the same condition as when the shooting occurred and the jury was informed of the minor differences which existed, the State justified the inspection, and it was reasonable that the inspection was an aid to the jury so that the location of bullet holes and further damage to the vehicle could be seen, which were details that would be difficult to depict in a photograph. Green v. State, 614 So. 2d 926, 1992 Miss. LEXIS 822 (Miss. 1992).

Motion to view premises was properly granted and requirements of statute were followed in permitting jury to view house, construction of which was basis of contract dispute, where motion was granted for purpose of rebutting copious amounts of testimony as to defective condition of house. Hutchins v. Page Contractors, Inc., 513 So. 2d 944, 1987 Miss. LEXIS 2837 (Miss. 1987).

Circuit Court did not abuse its discretion in refusing to allow jury to view scene of accident where scene was established by photographs, diagrams, and testimony at trial, and over 3 years had elapsed since incident had occurred, and therefore there was reasonable probability that there had been material change in physical characteristics of scene. Tolbert v. State, 511 So. 2d 1368, 1987 Miss. LEXIS 2681 (Miss. 1987), cert. denied, 484 U.S. 1016, 108 S. Ct. 723, 98 L. Ed. 2d 672, 1988 U.S. LEXIS 259 (U.S. 1988).

A view of the scene of a railroad crossing accident held permissible under the facts disclosed by the record. Illinois C. R. Co. v. McDaniel, 246 Miss. 600, 151 So. 2d 805, 1963 Miss. LEXIS 486 (Miss. 1963).

The allowance or refusal of the view by the jury is addressed to the sound discretion of the trial court. Laurel Equipment Co. v. Matthews, 218 Miss. 718, 67 So. 2d 258, 1953 Miss. LEXIS 595 (Miss. 1953).

In a suit by property owners to recover damages against operator of an adjacent paint shop on the ground that the vegetables, flowers and shrubbery were ruined and that the odors made them sick and prevented them from enjoying the peaceful occupancy and habitation of their premises, the court did not abuse its discretion in refusing a view by the jury of the premises. Laurel Equipment Co. v. Matthews, 218 Miss. 718, 67 So. 2d 258, 1953 Miss. LEXIS 595 (Miss. 1953).

It is within the discretion of the trial court to permit the jury to view the scene of the homicide. Parnell v. State, 211 Miss. 100, 50 So. 2d 925, 1951 Miss. LEXIS 336 (Miss. 1951).

Permitting jury to view premises damaged by surface water allegedly diverted by city onto plaintiff's lot, over plaintiff's objection, was error under this section [Code 1942, § 1800] where defendant made request in presence of jury, conditions had since changed, no order was entered providing for such view, no witnesses were produced at scene to make explanation to jury, and no showing was made that a view would promote ends of justice. Poteete v. Water Valley, 207 Miss. 173, 42 So. 2d 112, 1949 Miss. LEXIS 327 (Miss. 1949).

Chancellor's refusal to view premises is not reversible error since this is matter of judge's discretion. Brinkley v. Eaton, 205 Miss. 815, 39 So. 2d 491, 1949 Miss. LEXIS 468 (Miss. 1949).

Request for jury to view premises should not be granted unless it appears reasonably certain that it will be of essential aid, and not merely of some aid, to the jury in reaching a correct verdict, and that it is distinctly impracticable and inefficient to present the material elements to the jury by photographs, diagrams, maps, measurements, and the like. Floyd v. Williams, 198 Miss. 350, 22 So. 2d 365, 1945 Miss. LEXIS 205 (Miss. 1945).

Trial court did not abuse its discretion in not permitting jury to view the premises where ornamental trees reserved in timber deed had been cut and removed from the land, in action to recover actual damages and statutory penalties therefor, where diagrams, photographs, and testimony were sufficient to enable the jury to understand the respective contentions of the parties, notwithstanding that the photographs could not accurately disclose the number of trees cut and even though the plaintiffs joined with the defendant in the request for a view. Floyd v. Williams, 198 Miss. 350, 22 So. 2d 365, 1945 Miss. LEXIS 205 (Miss. 1945).

Granting in murder prosecution, over defendant's objection, of motion to view and inspect scenes of crime, setting out no ground or reason therefor other than "in order to reach the ends of justice," constituted reversible error, even though prior testimony taken on the merits showed justifiable reasons for such view and inspection, where scenes were about 20 miles from the courthouse and ranged over distance of quarter of mile, and evidence at scenes consisted almost entirely of appearances of nature in July whereas trial took place in September. Leflore v. State, 196 Miss. 632, 18 So. 2d 132, 1944 Miss. LEXIS 244 (Miss. 1944).

Error, if any, in permitting the jury to view premises, and taking testimony thereat, in a county other than that in which trial was in progress for recovery of damages resulting from a railroad's digging a ditch along its right of way and causing overflow on the lands of an adjoining owner, was not prejudicial where there was no evidence that the work done by the railroad could have been accomplished by another method, equally safe, convenient and inexpensive without damage to the adjoining landowner. Miller v. Ervin, 192 Miss. 712, 6 So. 2d 910, 1942 Miss. LEXIS 50 (Miss. 1942).

The granting of a request for a view by the court and jury of the place at which the crime was committed, rests in the discretion of the trial judge. Gordon v. State, 188 Miss. 708, 196 So. 507, 1940 Miss. LEXIS 78 (Miss. 1940).

Denial of a view of the scene of the crime, requested by defendant to demonstrate that deceased was not struck by a bullet from defendant's pistol, was not an abuse of discretion where such a view could not have given the jury any more definite information in the matter than did an engineer's diagram introduced in evidence. Gordon v. State, 188 Miss. 708, 196 So. 507, 1940 Miss. LEXIS 78 (Miss. 1940).

The court did not abuse its discretion in refusing to grant a view of the defendant's plant in an action to recover damages for injury sustained from the presence of a fly in a bottle of Coca Cola, where the evidence was very full and complete of the precautions taken by defendant to prevent any contamination in the process of bottling the Coca Cola and putting it upon the market. Meridian Coca Cola Bottling Co. v. Illges, 187 Miss. 27, 191 So. 817, 1939 Miss. LEXIS 81 (Miss. 1939).

In action for death of truck driver killed in automobile collision, permitting jury to view scene of accident was within court's discretion, notwithstanding changes in situation since time of accident, which were not such as to interfere with jury's determining at what point drivers of colliding automobiles could see each other. Mississippi Power Co. v. McCrary, 179 Miss. 427, 176 So. 165, 1937 Miss. LEXIS 46 (Miss. 1937).

In action for personal injuries allegedly resulting from defective floor, permitting the jury to view the premises without inquiry into the facts which would disclose the necessity therefor held error. Great Atlantic & Pacific Tea Co. v. Davis, 177 Miss. 562, 171 So. 550, 1937 Miss. LEXIS 139 (Miss. 1937).

Request for view should not be granted unless it is reasonably certain that it will be of essential aid to jury in reaching correct verdict, and that it is distinctly impracticable to present material elements to jury by photographs, diagrams, and measurements. National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

Upon request for view of premises by jury, considerations of inconvenience, distance, delay, and expenses are to be determined by court, although such matters may be urged in objection, because refusal of request is in trial court's discretion.

National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

Trial court is not required to allow view of premises by jury because both parties request it or consent to it, because refusal of request is in trial court's discretion. National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

View of premises by jury should not be allowed when there have been material changes in place or premises. National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

5. Presence of accused.

That defendant, while jury were viewing room in which homicide occurred, stood in door or hall held not in violation of constitutional right to be present. Bailey v. State, 147 Miss. 428, 112 So. 594, 1927 Miss. LEXIS 294 (Miss. 1927).

6. Keeping jury together.

Inspection of court by some jurors while others remain in hall held not to be such a separation of jury as to violate defendant's rights, where the entire jury remained in the control of the bailiffs. Bailey v. State, 147 Miss. 428, 112 So. 594, 1927 Miss. LEXIS 294 (Miss. 1927).

7. Proceedings at view.

In an eminent domain case, the trial court committed reversible error in allowing the jury to view the property in the absence of the judge and the court reporter, the heir being aggravated by the additional fact that the highway department engineer, while at the view, answered questions propounded to him by members of the jury. Gunn v. Mississippi State Highway Com., 229 So. 2d 828, 1969 Miss. LEXIS 1258 (Miss. 1969).

Examination away from the courthouse under this section [Code 1942, § 1800] must be devoted to the explanation of the scene, location of distances, and such testimony as tends to make a complete map of the situation. Jones v. State, 141 Miss. 894, 107 So. 8 (Miss. 1926).

Where the proceedings at the place of view changed from an examination of the location to an inquiry into defendant's guilt of the crime charged, timely objected to, defendant was prejudiced. Jones v. State, 141 Miss. 894, 107 So. 8 (Miss. 1926).

8. Review.

Assignment of error predicated on district attorney's statement in presence of jury, upon introduction of photographs of scene of killing in murder prosecution, that he would like jury to view the premises, objection to which was made and sustained, was not sufficiently preserved for review in the absence of a motion for a mistrial; and by failing to make such a motion defendant waived the point. Johnson v. State, 46 So. 2d 924 (Miss. 1950).

Where order permitting jury to view premises was erroneously made and it improperly hampered appealing defendant in respect to valuable constitutional right to have verdict reviewed on assignment that it was contrary to overwhelming weight of evidence, error held reversible where such assignment, when reviewed aside from evidence taken at scene, presented serious question. Great Atlantic & Pacific Tea Co. v. Davis, 177 Miss. 562, 171 So. 550, 1937 Miss. LEXIS 139 (Miss. 1937).

Where there has been view or inspection of place or premises by jury, supreme court will not reverse on evidence, if there be any substantial testimony, delivered by sworn witnesses in support of verdict. National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

Objection to request for view by jury asked for by opposing counsel did not apply to later request for view asked for by jury, so as to preserve later request for review in supreme court. National Box Co. v. Bradley, 171 Miss. 26, 157 So. 91 (Miss. 1934).

RESEARCH REFERENCES

ALR.

Prejudicial effect of misconduct by one other than juror during authorized view by jury in civil case. 45 A.L.R.2d 1128.

Necessity for presence of judge at view by jury in criminal case. 47 A.L.R.2d 1227.

Prejudicial effect of indicating to the jury in a civil case the desire of a party for a view by the jury. 76 A.L.R.2d 766.

Unauthorized view of premises by juror or jury in criminal case as ground for reversal, new trial, or mistrial. 50 A.L.R.4th 995.

Am. Jur.

75 Am. Jur. 2d (Rev), Trial §§ 133 et seq.

23 Am. Jur. Pl & Pr Forms (Rev), Trial, Forms 91-95 (view by jury).

CJS.

88 C.J.S., Trial §§ 133-135.

§ 13-5-93. Nine jurors may return a verdict in civil cases.

In the trial of all civil suits in the circuit or chancery courts of this state, nine or more jurors may agree on the verdict and return it into court as the verdict of the jury. Either party may request an instruction in writing to this effect and it shall thereupon be the duty of the trial judge to instruct the jury in writing that if nine or more jurors agree on the verdict that they may return the same into open court as the verdict of the jury.

HISTORY: Codes, Hemingway's 1917, § 2214; 1930, § 2067; 1942, § 1801; Laws, 1916, ch. 162.

Cross References — Return of verdict by nine jurors in a special court of eminent domain, see § 11-27-23.

Provision that no special form of verdict is required in criminal cases, see § 99-19-9.

Rules governing jurors, juries, and jury verdicts, see Miss. R. Civ. P. 47 and 48.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Compromise verdict.

1. In general.

It is permissible to question jurors, with respect to their verdict, as to any extraneous prejudicial information which was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Schmiz v. Illinois C. G. R. Co., 546 So. 2d 693, 1989 Miss. LEXIS 320 (Miss. 1989).

Defendant in a personal injury action did not waive his right to be tried before 12 jurors when, after the jury was reduced to 11 members, he made only a general objection and did not move for a mistrial. Brame v. Garwood, 339 So. 2d 978, 1976 Miss. LEXIS 1679 (Miss. 1976).

Trial judge's conduct in going to jury room during deliberation and speaking to jury on inquiry by jury whether nine members of jury could sign verdict, there being no showing on what was said, is not reversible error when an instruction had been given authorizing nine members of jury to agree upon and bring in verdict, and verdict, when brought in, was signed by all members of jury. Stevenson v. Robinson, 37 So. 2d 568 (Miss. 1948).

Instruction that verdict of nine jurors should be verdict of jury held harmless, where it did not appear instruction was acted on. Reith v. Ansley, 162 Miss. 886, 140 So. 521, 1932 Miss. LEXIS 176 (Miss. 1932).

Where verdict showing ten to two for plaintiff was returned without instruction regarding agreement by nine jurors or more, court could enter judgment for plaintiff. Ricketts v. Drew Grocery Co., 155 Miss. 459, 124 So. 495, 1929 Miss. LEXIS 312 (Miss. 1929).

A lottery verdict cannot be amended but a new trial should be granted. Hines v. Lockhart, 105 So. 449 (Miss. 1925).

Finding by verdict of more than is necessary does not vitiate it, but may be disregarded as surplusage. Hines v. Lockhart, 105 So. 449 (Miss. 1925).

When requested the jury should be polled but if not polled before it becomes impossible to do so the court has power to render judgment on the verdict rendered. Archer v. State, 140 Miss. 597, 105 So. 747, 1925 Miss. LEXIS 295 (Miss. 1925).

A jury is the exclusive judge of the weight of the evidence and credibility of witnesses. Louisville & N. R. Co. v. Jones, 134 Miss. 53, 98 So. 230, 1923 Miss. LEXIS 234 (Miss. 1923).

A nine jury verdict applies to bastardy proceedings. Welford v. Havard, 127 Miss. 88, 89 So. 812, 1921 Miss. LEXIS 203 (Miss. 1921).

The verdict of nine jurors in a civil case becomes the verdict of the jury and is constitutional. Ulmer v. Pistole, 115 Miss. 485, 76 So. 522, 1917 Miss. LEXIS 222 (Miss. 1917).

2. Compromise verdict.

Although a trial judge was unable to instruct a jury regarding a compromise verdict before the jury returned with a verdict, the failure to give the instruction did not warrant reversal because on both occasions the jury was polled, at least nine members of the jury found a subcontractor was entitled to damages in its breach of contract action against a general contractor, and on both occasions, the jury awarded $41,500, and, as such, the jury's conclusion that the subcontractor was entitled to damages both times indicated no compromise was needed. DC General Contractors, Inc. v. Slay Steel, Inc., 109 So. 3d 577, 2013 Miss. App. LEXIS 50 (Miss. Ct. App. 2013).

RESEARCH REFERENCES

ALR.

Validity and effect of verdict in civil action finding defendant "not guilty." 7 A.L.R.2d 1341.

Propriety and prejudicial effect of trial court's inquiry as to numerical division of jury. 77 A.L.R.3d 769.

Propriety and prejudicial effect of sending written instructions with retiring jury in civil case. 91 A.L.R.3d 336.

Propriety and prejudicial effect of sending written instructions with retiring jury in criminal case. 91 A.L.R.3d 382.

Validity of agreement, by stipulation or waiver in state civil case, to accept verdict by number proportion of jurors less than that constitutionally permitted. 15 A.L.R.4th 213.

Am. Jur.

75B Am. Jur. 2d (Rev), Trial § 1270-1273, 1276, 1278.

CJS.

89 C.J.S., Trials § 1016–1018.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Juries and Jury Verdicts-Rules 38, 48-51, and 59. 52 Miss. L. J. 163, March 1982.

§ 13-5-95. Separate accommodations and bailiffs for male and female jurors.

In selecting overnight accommodations for jurors, the court shall provide separate housing for men and women jurors. Male bailiffs shall accompany the male jurors, and female bailiffs the female jurors. At least one bailiff shall accompany each group, and the court in its sound discretion shall require as many bailiffs as are necessary. Either group may be housed in private premises if necessary.

HISTORY: Codes, 1942, § 1762-07; Laws, 1968, ch. 337, § 1, eff. from and after passage (approved July 9, 1968).

RESEARCH REFERENCES

Am. Jur.
15 Am. Jur. Pl & Pr Forms (Rev), Jury, Form 208 (jurors' board bill).

§ 13-5-97. Certain jury records exempt from public access requirements.

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are developed among juries concerning judicial decisions, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

HISTORY: Laws, 1983, ch. 424, § 11.

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

CHAPTER 7.

STATE GRAND JURY ACT

Sec.
13-7-1. Short title; citation of state grand juries [Repealed effective July 1, 2024].
13-7-3. Definitions [Repealed effective July 1, 2024].
13-7-5. State grand jury system established; number of jurors; meeting location; quorum [Repealed effective July 1, 2024].
13-7-7. Jurisdiction of state grand jury; petition to impanel state grand jury; impaneling state grand jury; powers and duties of impaneling judge [Repealed effective July 1, 2024].
13-7-9. Return of indictment by state grand jury; powers and duties of and law applicable to state grand juries [Repealed effective July 1, 2024].
13-7-11. Duties of Attorney General or designee [Repealed effective July 1, 2024].
13-7-13. Clerk of state grand jury; compensation [Repealed effective July 1, 2024].
13-7-15. Creation of list of potential jurors; selection of jurors; grounds for excusing juror from service; swearing of jurors; compensation of jurors [Repealed effective July 1, 2024].
13-7-17. Foreman and deputy foreman of grand jury [Repealed effective July 1, 2024].
13-7-19. Challenging the grand jury [Repealed effective July 1, 2024].
13-7-21. Subpoenas and subpoenas duces tecum; contempt [Repealed effective July 1, 2024].
13-7-23. Amending petition and order establishing and impaneling state grand jury [Repealed effective July 1, 2024].
13-7-25. Recording of proceedings of state grand jury; defendants right to review record; custody of records [Repealed effective July 1, 2024].
13-7-27. Administering oath to witnesses [Repealed effective July 1, 2024].
13-7-29. Secrecy of proceedings; exceptions; penalties for violation [Repealed effective July 1, 2024].
13-7-31. Authority of impaneling judge to hear matters arising from grand jury proceedings [Repealed effective July 1, 2024].
13-7-33. Attorney general or designee to coordinate scheduling activities [Repealed effective July 1, 2024].
13-7-35. Requirements for “True Bill” of indictment; place where indictment is to be tried [Repealed effective July 1, 2024].
13-7-37. Immunity or privilege given on account of testimony; waiver [Repealed effective July 1, 2024].
13-7-39. Sealing of records, orders and subpoenas of grand jury [Repealed effective July 1, 2024].
13-7-41. Space for grand jury; cooperation of Department of Public Safety and Bureau of Narcotics [Repealed effective July 1, 2024].
13-7-43. Authority of Supreme Court to promulgate rules for operation of grand jury system [Repealed effective July 1, 2024].
13-7-45. Severability provision [Repealed effective July 1, 2024].
13-7-47. Retroactivity of chapter [Repealed effective July 1, 2024].
13-7-49. Chapter does not amend, repeal or supersede other laws governing grand juries, investigations, indictments or prosecutions [Repealed effective July 1, 2024].

§ 13-7-1. Short title; citation of state grand juries [Repealed effective July 1, 2024].

This chapter may be cited as the "State Grand Jury Act," and any state grand jury which may be convened as provided herein shall be known as "State Grand Jury of Mississippi."

HISTORY: Laws, 1993, ch. 553, § 1; reenacted without change, Laws, 1998, ch. 382, § 1; reenacted without change, Laws, 1999, ch. 480, § 1; reenacted without change, Laws, 2002, ch. 471, § 1; reenacted without change, Laws, 2011, ch. 337, § 1; reenacted without change, Laws, 2014, ch. 526, § 1, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

Cross References — Rules pertaining to grand juries in circuit and county courts, see MRCrP 13.2.

RESEARCH REFERENCES

ALR.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

Am. Jur.

38 Am. Jur. 2d Grand Jury §§ 1, 3, 5.

CJS.

38A C.J.S. Grand Juries §§ 1-9, 108, 109 et seq.

§ 13-7-3. Definitions [Repealed effective July 1, 2024].

For purposes of this chapter:

(a) The phrase "Attorney General or his designee" also includes:

(i) The Attorney General or his designees;

(ii) The Attorney General and his designee or designees.

(b) The term "impaneling judge" means any senior circuit court judge of any circuit court district who, upon petition by the Attorney General, impanels a state grand jury under the provisions of this chapter and shall also include any successor to such judge as provided by law.

HISTORY: Laws, 1993, ch. 553, § 2; reenacted without change, Laws, 1998, ch. 382, § 2; reenacted without change, Laws, 1999, ch. 480, § 2; reenacted without change, Laws, 2002, ch. 471, § 2; reenacted without change, Laws, 2011, ch. 337, § 2; reenacted without change, Laws, 2014, ch. 526, § 2, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337,

§ 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d Grand Jury §§ 1, 3, 5.

§ 13-7-5. State grand jury system established; number of jurors; meeting location; quorum [Repealed effective July 1, 2024].

There is established a state grand jury system. Each state grand jury shall consist of twenty (20) persons who may be impaneled and who may meet at any suitable location within the state as designated by the impaneling judge. Fifteen (15) members of a state grand jury constitute a quorum.

HISTORY: Laws, 1993, ch. 553, § 3; reenacted without change, Laws, 1998, ch. 382, § 3; reenacted without change, Laws, 1999, ch. 480, § 3; reenacted without change, Laws, 2002, ch. 471, § 3; reenacted without change, Laws, 2011, ch. 337, § 3; reenacted without change, Laws, 2014, ch. 526, § 3, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d Grand Jury, §§ 9-12, 17.

CJS.

38A C.J.S. Grand Juries § 63, 64.

§ 13-7-7. Jurisdiction of state grand jury; petition to impanel state grand jury; impaneling state grand jury; powers and duties of impaneling judge [Repealed effective July 1, 2024].

(1) The jurisdiction of a state grand jury impaneled under this chapter extends throughout the state. The subject matter jurisdiction of a state grand jury in all cases is limited to offenses involving any and all conduct made unlawful by the Mississippi Uniform Controlled Substances Law or any other provision of law involving narcotics, dangerous drugs or controlled substances, or any crime arising out of or in connection with a crime involving narcotics, dangerous drugs or controlled substances, and crimes involving any attempt, aiding, abetting, solicitation or conspiracy to commit any of the aforemen-

tioned crimes if the crimes occur within more than one (1) circuit court district or have transpired or are transpiring or have significance in more than one (1) circuit court district of this state.

(2) Whenever the Attorney General considers it necessary, and normal investigative or prosecutorial procedures are not adequate, the Attorney General may petition in writing to the senior circuit court judge of any circuit court district in this state for an order impaneling a state grand jury. For the purposes of this chapter, such judge shall be referred to as the impaneling judge. The petition must allege the following:

(a) The type of offenses to be inquired into;

(b) That the state grand jury has jurisdiction to consider such matters;

(c) That the offenses to be inquired into have occurred within more than one (1) circuit court district or have transpired or are transpiring or have significance in more than one (1) circuit court district of this state;

(d) That the Attorney General has conferred with the Commissioner of Public Safety and the Director of the Mississippi Bureau of Narcotics and that each of such officials join in the petition; and

(e) That the Attorney General has conferred with the appropriate district attorney for each jurisdiction in which the crime or crimes are alleged to have occurred.

(3) The impaneling judge, after due consideration of the petition, may order the impanelment of a state grand jury in accordance with the petition for a term of twelve (12) calendar months. Upon petition by the Attorney General, the impaneling judge, by order, may extend the term of that state grand jury for a period of six (6) months, but the term of that state grand jury, including any extension thereof, shall not exceed two (2) years.

(4) The impaneling judge shall preside over the state grand jury until its discharge.

(5) The impaneling judge may discharge a state grand jury prior to the end of its original term or any extensions thereof, upon a determination that its business has been completed, or upon the request of the Attorney General.

(6) If, at any time within the original term of any state grand jury or any extension thereof, the impaneling judge determines that the state grand jury is not conducting investigative activity within its jurisdiction or proper investigative activity, the impaneling judge may limit the investigations so that the investigation conforms with the jurisdiction of the state grand jury and existing law or he may discharge the state grand jury. An order issued pursuant to this subsection or under subsection (5) of this section shall not become effective less than ten (10) days after the date on which it is issued and actual notice given to the Attorney General and the foreman of the state grand jury, and may be appealed by the Attorney General to the Supreme Court. If an appeal from the order is made, the state grand jury, except as otherwise ordered by the Supreme Court, shall continue to exercise its powers pending disposition of the appeal.

HISTORY: Laws, 1993, ch. 553, § 4; reenacted without change, Laws, 1998, ch.

382, § 4; reenacted without change, Laws, 1999, ch. 480, § 4; reenacted without change, Laws, 2002, ch. 471, § 4; reenacted without change, Laws, 2011, ch. 337, § 4; reenacted without change, Laws, 2014, ch. 526, § 4, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence of subsection (1), as reenacted by Laws, 2002, ch. 471, § 4. The words "Mississippi Controlled Substance Law" were changed to "Mississippi Controlled Substances Law." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

Cross References — Use of procedures specified in this section to amend petition and order, see § 13-1-23.

Mississippi Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

RESEARCH REFERENCES

ALR.

Jurisdiction or power of grand jury after expiration of term of court for which organized. 75 A.L.R.2d 544.

Am. Jur.

38 Am. Jur. 2d Grand Jury §§ 13 et seq.

CJS.

38A C.J.S. Grand Juries §§ 1-94.

§ 13-7-9. Return of indictment by state grand jury; powers and duties of and law applicable to state grand juries [Repealed effective July 1, 2024].

A state grand jury may return indictments irrespective of the county or judicial district where the offense is committed. If an indictment is returned, it must be certified and transferred for prosecution to the county designated by the impaneling judge. The powers and duties of and the law applicable to county grand juries apply to the state grand jury, except when such powers and duties and applicable law are inconsistent with the provisions of this chapter.

HISTORY: Laws, 1993, ch. 553, § 5; reenacted without change, Laws, 1998, ch. 382, § 5; reenacted without change, Laws, 1999, ch. 480, § 5; reenacted without change, Laws, 2002, ch. 471, § 5; reenacted without change, Laws, 2011, ch. 337, § 5; reenacted without change, Laws, 2014, ch. 526, § 5, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-11. Duties of Attorney General or designee [Repealed effective July 1, 2024].

The Attorney General or his designee shall attend sessions of a state grand jury and shall serve as its legal advisor. The Attorney General or his designee shall examine witnesses, present evidence, and draft indictments and reports upon the direction of a state grand jury.

HISTORY: Laws, 1993, ch. 553, § 6; reenacted without change, Laws, 1998, ch. 382, § 6; reenacted without change, Laws, 1999, ch. 480, § 6; reenacted without change, Laws, 2002, ch. 471, § 6; reenacted without change, Laws, 2011, ch. 337, § 6; reenacted without change, Laws, 2014, ch. 526, § 6, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

ALR.

Validity and construction of statutes permitting grand jury witnesses to be accompanied by counsel. 90 A.L.R.3d 1340.

Failure to swear or irregularity in swearing witnesses appearing before grand jury as ground for dismissal of indictment. 23 A.L.R.4th 154.

Presence of unauthorized persons during state grand jury proceedings as affecting indictment. 23 A.L.R.4th 397.

Duty of prosecutor to present exculpatory evidence to state grand jury. 49 A.L.R.5th 639.

§ 13-7-13. Clerk of state grand jury; compensation [Repealed effective July 1, 2024].

The impaneling judge shall appoint a circuit clerk who shall serve as the clerk of the state grand jury. The compensation of the state grand jury clerk shall be paid out of any available funds appropriated for that purpose.

HISTORY: Laws, 1993, ch. 553, § 7; reenacted without change, Laws, 1998, ch. 382, § 7; reenacted without change, Laws, 1999, ch. 480, § 7; reenacted without change, Laws, 2002, ch. 471, § 7; reenacted without change, Laws, 2011, ch. 337, § 7; reenacted without change, Laws, 2014, ch. 526, § 7, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-15. Creation of list of potential jurors; selection of jurors; grounds for excusing juror from service; swearing of jurors; compensation of jurors [Repealed effective July 1, 2024].

After the impaneling judge orders a term for the state grand jury on petition of the Attorney General, the impaneling judge shall order that the circuit clerk for each county shall proceed to draw at random from the jury box as provided by Section 13-5-26, the name of one (1) voter of such county for each two thousand (2,000) voters or fraction thereof registered in such county and shall place these names on a list. The circuit clerk shall not disqualify or excuse any individual whose name is drawn. When the list is compiled, the clerk of the circuit court for each county shall forward the list to the clerk of the state grand jury. Upon receipt of all the lists from the clerks of the circuit courts, the clerk of the state grand jury shall place all the names so received upon a list which shall be known as the master list.

The impaneling judge shall order the clerk of the state grand jury to produce the master list and shall direct the random drawing of the names of one hundred (100) persons from the master list. The names drawn shall be given to the clerk of the state grand jury who shall cause each person drawn for service to be served with a summons either personally by the sheriff of the county where the juror resides or by mail, addressed to the juror at his usual residence, business or post office address, requiring him to report for state grand jury service at a specified time and place as designated by the impaneling judge. From the one hundred (100) persons summoned, a state grand jury shall be drawn for that term consisting of twenty (20) persons. State grand jurors must be drawn in the same manner as jurors are drawn for service on the county grand jury.

All qualified persons shall be liable to serve as state grand jurors, unless excused by the court for one (1) of the following causes:

(a) When the juror is ill, or when on account of serious illness in the juror's family, the presence of the juror is required at home;

(b) When the juror's attendance would cause a serious financial loss to the juror or to the juror's business; or

(c) When the juror is under an emergency, fairly equivalent to those mentioned in the foregoing paragraphs (a) and (b).

An excuse of illness under paragraph (a) may be made to the state grand jury clerk outside of open court by providing the clerk with either a certificate of a licensed physician or an affidavit of the juror, stating that the juror is ill or that there is a serious illness in the juror's family. The test of an excuse under paragraph (b) shall be whether, if the juror were incapacitated by illness or otherwise for a week, some other persons would be available or could reasonably be procured to carry on the business for the week, and the test of an excuse under paragraph (c) shall be such as to be the fair equivalent, under the circumstances of that prescribed under paragraph (b). In cases under paragraphs (b) and (c) the excuse must be made by the juror, in open court, under oath.

It shall be unlawful for any employer or other person to persuade or attempt to persuade any juror to avoid jury service, or to intimidate or to threaten any juror in that respect. So to do shall be deemed an interference with the administration of justice and a contempt of court and punishable as such.

Every citizen over sixty-five (65) years of age shall be exempt from service if he claims the privilege. No qualified juror shall be excluded because of such reason, but the same shall be a personal privilege to be claimed by any person selected for state grand jury duty. Any citizen over sixty-five (65) years of age may claim this personal privilege outside of open court by providing the clerk of court with information that allows the clerk to determine the validity of the claim.

The state grand jurors shall be charged by the impaneling judge as to their authority and responsibility under the law and each juror shall be sworn pursuant to Section 13-5-45. Nothing in this section shall be construed as limiting the right of the Attorney General or his designee to request that a potential state grand juror be excused for cause. The jury selection process shall be conducted by the impaneling judge. Jurors of a state grand jury shall receive reimbursement for travel and mileage as provided for state employees by Section 25-3-41 and shall be paid per diem compensation in the amount provided by Section 25-3-69. All compensation and expenses for meals and lodging of state grand jurors shall be paid out of any available funds appropriated for that purpose.

HISTORY: Laws, 1993, ch. 553, § 8; reenacted without change, Laws, 1998, ch. 382, § 8; reenacted without change, Laws, 1999, ch. 480, § 8; reenacted without change, Laws, 2002, ch. 471, § 8; reenacted without change, Laws, 2011, ch. 337, § 8; reenacted without change, Laws, 2014, ch. 526, § 8, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

ALR.

Law enforcement officers as qualified jurors in criminal cases. 72 A.L.R.3d 895.

Former law enforcement officers as qualified jurors in criminal cases. 72 A.L.R.3d 958.

Jury: who is lawyer or attorney disqualified or exempt from service, or subject to challenge for cause. 57 A.L.R.4th 1260.

Am. Jur.
38 Am. Jur. 2d Grand Jury, §§ 8, 17-26.

CJS.
38A C.J.S. Grand Juries §§ 23, 39-66, 100-103.

§ 13-7-17. Foreman and deputy foreman of grand jury [Repealed effective July 1, 2024].

The impaneling judge shall appoint one (1) of the jurors to be a foreman and another to be deputy foreman. During the absence of the foreman, the deputy foreman shall act as foreman. The foreman and deputy foreman shall be sworn pursuant to Section 13-5-45.

HISTORY: Laws, 1993, ch. 553, § 9; reenacted without change, Laws, 1998, ch. 382, § 9; reenacted without change, Laws, 1999, ch. 480, § 9; reenacted without change, Laws, 2002, ch. 471, § 9; reenacted without change, Laws, 2011, ch. 337, § 9; reenacted without change, Laws, 2014, ch. 526, § 9, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-19. Challenging the grand jury [Repealed effective July 1, 2024].

After the state grand jurors shall have been sworn and impaneled, no objections shall be raised by plea or otherwise, to the state grand jury, but the impaneling of the state grand jury shall be conclusive evidence of its competency and qualifications. However, any party interested may challenge the jury, except to the array, for fraud.

HISTORY: Laws, 1993, ch. 553, § 10; reenacted without change, Laws, 1998, ch. 382, § 10; reenacted without change, Laws, 1999, ch. 480, § 10; reenacted without change, Laws, 2002, ch. 471, § 10; reenacted without change, Laws, 2011, ch. 337, § 10; reenacted without change, Laws, 2014, ch. 526, § 10, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d Grand Jury, §§ 27-32.

CJS.
38A C.J.S. Grand Juries §§ 31–33, 73–83.

§ 13-7-21. Subpoenas and subpoenas duces tecum; contempt [Repealed effective July 1, 2024].

The clerk of the state grand jury, upon request of the Attorney General or his designee, shall issue subpoenas, or subpoenas duces tecum to compel individuals, documents or other materials to be brought from anywhere in the state or another state to a state grand jury. In addition, a state grand jury may proceed in the same manner as is provided for by law in relation to the issuance of subpoenas and subpoenas duces tecum; however, the provisions of such law shall not be considered a limitation upon this section, but shall be supplemental thereto. The subpoenas and subpoenas duces tecum may be for investigative purposes and for the retention of documents or other materials so subpoenaed for proper criminal proceedings. Any investigator employed by the Attorney General or any law enforcement officer with appropriate jurisdiction is empowered to serve such subpoenas and subpoenas duces tecum and receive such documents and other materials for return to a state grand jury. Any person violating a subpoena or subpoena duces tecum issued pursuant to this chapter, or who fails to fully answer all questions put to him before proceedings of the state grand jury whenever the response thereto is not privileged or otherwise protected by law, including the granting of immunity as authorized by this chapter, or any other law, may be punished by the impaneling judge for contempt provided the response is not privileged or otherwise protected by law. The Attorney General or his designee may petition the impaneling judge to compel compliance by the person alleged to have committed the violation or who has failed to answer. If the impaneling judge considers compliance is warranted, he may order compliance and may punish the individual for contempt, as provided in Section 9-1-17, where the compliance does not occur. The clerk of the state grand jury may also issue subpoenas and subpoenas duces tecum to compel individuals, documents or other materials to be brought from anywhere in the state to the trial of any indictment returned by a state grand jury or the trial of any civil forfeiture action arising out of an investigation conducted by a state grand jury.

HISTORY: Laws, 1993, ch. 553, § 11; reenacted without change, Laws, 1998, ch. 382, § 11; reenacted without change, Laws, 1999, ch. 480, § 11; reenacted without change, Laws, 2002, ch. 471, § 11; reenacted without change, Laws, 2011, ch. 337, § 11; reenacted without change, Laws, 2014, ch. 526, § 11, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382

§ 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

ALR.

Validity of indictment where grand jury heard incompetent witness. 39 A.L.R.3d 1064.

Power of court to control evidence or witnesses going before grand jury. 52 A.L.R.3d 1316.

Refusal to answer questions before state grand jury as direct contempt of court. 69 A.L.R.3d 501.

Validity and construction of statutes permitting grand jury witnesses to be accompanied by counsel. 90 A.L.R.3d 1340.

Privilege of news gatherer against disclosure of confidential sources or information. 99 A.L.R.3d 37.

Failure to swear or irregularity in swearing witnesses appearing before grand jury as ground for dismissal of indictment. 23 A.L.R.4th 154.

Presence of unauthorized persons during state grand jury proceedings as affecting indictment. 23 A.L.R.4th 397.

Individual's right to present complaint or evidence of criminal offense to grand jury. 24 A.L.R.4th 316.

Rights and remedies of financial institution customer in relation to subpoena duces tecum exception to general prohibition of state right to financial privacy statute. 43 A.L.R.4th 1157.

Am. Jur.

38 Am. Jur. 2d Grand Jury §§ 2, 3, 33-37.

§ 13-7-23. Amending petition and order establishing and impaneling state grand jury [Repealed effective July 1, 2024].

Once a state grand jury has entered into a term, the petition and order establishing and impaneling the state grand jury may be amended as often as necessary and appropriate so as to expand the areas of inquiry authorized by the order or to add additional areas of inquiry thereto, consistent with the provisions of this chapter. The procedures for amending this authority are the same as those for filing the original petition and order.

HISTORY: Laws, 1993, ch. 553, § 12; reenacted without change, Laws, 1998, ch. 382, § 12; reenacted without change, Laws, 1999, ch. 480, § 12; reenacted without change, Laws, 2002, ch. 471, § 12; reenacted without change, Laws, 2011, ch. 337, § 12; reenacted without change, Laws, 2014, ch. 526, § 12, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

Cross References — Procedures for filing original order and petition, see § 13-7-7.

§ 13-7-25. Recording of proceedings of state grand jury; defendants right to review record; custody of records [Repealed effective July 1, 2024].

A court reporter shall record either stenographically or by use of an electronic recording device, all state grand jury proceedings except when the state grand jury is deliberating or voting. Subject to the limitations of Section 13-7-29 and any rule of court, a defendant has the right to review and to reproduce the stenographically or electronically recorded materials. Transcripts of the recorded testimony or proceedings must be made when requested by the Attorney General or his designee. An unintentional failure of any recording to reproduce all or any portion of the testimony or proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom and all books, papers, records and correspondence produced before the state grand jury shall remain in the custody and control of the Attorney General or his designee unless otherwise ordered by the court in a particular case.

HISTORY: Laws, 1993, ch. 553, § 13; reenacted without change, Laws, 1998, ch. 382, § 13; reenacted without change, Laws, 1999, ch. 480, § 13; reenacted without change, Laws, 2002, ch. 471, § 13; reenacted without change, Laws, 2011, ch. 337, § 13; reenacted without change, Laws, 2014, ch. 526, § 13, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

ALR.

Accused's right to inspect minutes of state grand jury. 20 A.L.R.3d 7.

Discovery, in civil proceeding, of records of criminal investigation by state grand jury. 69 A.L.R.4th 298.

Am. Jur.

38 Am. Jur. 2d Grand Jury § 46.

CJS.

38A C.J.S. Grand Juries §§ 136, 158.

§ 13-7-27. Administering oath to witnesses [Repealed effective July 1, 2024].

The foreman shall administer an oath or affirmation in the manner prescribed by law to any witness who testifies before a state grand jury.

HISTORY: Laws, 1993, ch. 553, § 14; reenacted without change, Laws, 1998, ch. 382, § 14; reenacted without change, Laws, 1999, ch. 480, § 14; reenacted without change, Laws, 2002, ch. 471, § 14; reenacted without change, Laws,

2011, ch. 337, § 14; reenacted without change, Laws, 2014, ch. 526, § 14, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

ALR.

Failure to swear or irregularity in swearing witnesses appearing before grand jury as ground for dismissal of indictment. 23 A.L.R.4th 154.

Am. Jur.

38 Am. Jur. 2d Grand Jury §§ 7, 39, 41, 43 et seq.

CJS.

38A C.J.S. Grand Juries §§ 137, 145-149, 159-225.

§ 13-7-29. Secrecy of proceedings; exceptions; penalties for violation [Repealed effective July 1, 2024].

(1) State grand jury proceedings are secret, and a state grand juror shall not disclose the nature or substance of the deliberations or vote of the state grand jury. The only persons who may be present in the state grand jury room when a state grand jury is in session, except for deliberations and voting, are the state grand jurors, the Attorney General or his designees, an interpreter if necessary and the witness testifying. A state grand juror, the Attorney General or his designees, any interpreter used and any person to whom disclosure is made pursuant to subsection (2)(b) of this section may not disclose the testimony of a witness examined before a state grand jury or other evidence received by it except when directed by a court for the purpose of:

(a) Ascertaining whether it is consistent with the testimony given by the witness before the court in any subsequent criminal proceedings;

(b) Determining whether the witness is guilty of perjury;

(c) Assisting local, state or federal law enforcement or investigating agencies, including another grand jury, in investigating crimes under their investigative jurisdiction;

(d) Providing the defendant the materials to which he is entitled pursuant to Section 13-7-25; or

(e) Complying with constitutional, statutory or other legal requirements or to further justice.

If the court orders disclosure of matters occurring before a state grand jury, the disclosure shall be made in that manner, at that time, and under those conditions as the court directs.

(2) In addition, disclosure of testimony of a witness examined before a

state grand jury or other evidence received by it may be made without being directed by a court to:

(a) The Attorney General or his designees for use in the performance of their duties; or

(b) Those governmental personnel, including personnel of the state or its political subdivisions, as are considered necessary by the Attorney General or his designee to assist in the performance of their duties to enforce the criminal laws of the state; however, any person to whom matters are disclosed under this paragraph (b) shall not utilize the state grand jury material for purposes other than assisting the Attorney General or his designee in the performance of their duties to enforce the criminal laws of this state. The Attorney General or his designees shall promptly provide the impaneling judge the names of the persons to whom the disclosure has been made and shall certify that he has advised these persons of their obligations of secrecy under this section.

(3) Nothing in this section affects the attorney-client relationship. A client has the right to communicate to his attorney any testimony given by the client to a state grand jury, any matters involving the client discussed in the client's presence before a state grand jury and evidence involving the client received by a proffer to a state grand jury in the client's presence.

(4) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00), or by a term of imprisonment not exceeding one (1) year, or by both such fine and imprisonment.

(5) State grand jurors, the Attorney General and his designee, any interpreter used and the clerk of the state grand jury shall be sworn to secrecy and also may be punished for criminal contempt for violations of this section.

HISTORY: Laws, 1993, ch. 553, § 15; reenacted without change, Laws, 1998, ch. 382, § 15; reenacted without change, Laws, 1999, ch. 480, § 15; reenacted without change, Laws, 2002, ch. 471, § 15; reenacted without change, Laws, 2011, ch. 337, § 15; reenacted without change, Laws, 2014, ch. 526, § 15, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

Cross References — Right of defendant to review records of grand jury proceedings, subject to limitations of this section, see § 13-7-25.

RESEARCH REFERENCES

ALR.

Accused's right to inspect minutes of state grand jury. 20 A.L.R.3d 7.

Validity and construction of statutes permitting grand jury witnesses to be accompanied by counsel. 90 A.L.R.3d 1340.

Presence of unauthorized persons during state grand jury proceedings as affecting indictment. 23 A.L.R.4th 397.

Discovery, in civil proceeding, of records of criminal investigation by state grand jury. 69 A.L.R.4th 298.

Am. Jur.

38 Am. Jur. 2d Grand Jury §§ 53-56.

§ 13-7-31. Authority of impaneling judge to hear matters arising from grand jury proceedings [Repealed effective July 1, 2024].

Except for the prosecution of cases arising from indictments issued by the state grand jury, the impaneling judge has jurisdiction to hear all matters arising from the proceedings of a state grand jury, including, but not limited to, matters related to the impanelment or removal of state grand jurors, the quashing of subpoenas and the punishment for contempt.

HISTORY: Laws, 1993, ch. 553, § 16; reenacted without change, Laws, 1998, ch. 382, § 16; reenacted without change, Laws, 1999, ch. 480, § 16; reenacted without change, Laws, 2002, ch. 471, § 16; reenacted without change, Laws, 2011, ch. 337, § 16; reenacted without change, Laws, 2014, ch. 526, § 16, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-33. Attorney general or designee to coordinate scheduling activities [Repealed effective July 1, 2024].

The Attorney General or his designee shall coordinate the scheduling of activities of any state grand jury.

HISTORY: Laws, 1993, ch. 553, § 17; reenacted without change, Laws, 1998, ch. 382, § 17; reenacted without change, Laws, 1999, ch. 480, § 17; reenacted without change, Laws, 2002, ch. 471, § 17; reenacted without change, Laws, 2011, ch. 337, § 17; reenacted without change, Laws, 2014, ch. 526, § 17, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-35. Requirements for "True Bill" of indictment; place where indictment is to be tried [Repealed effective July 1, 2024].

(1) In order to return a "True Bill" of indictment, twelve (12) or more state grand jurors must find that probable cause exists for the indictment and vote in favor of the indictment. Upon indictment by a state grand jury, the indictment shall be returned to the impaneling judge. If the impaneling judge considers the indictment to be within the authority of the state grand jury and otherwise in accordance with the provisions of this chapter, he shall order the clerk of the state grand jury to certify the indictment and return the indictment to the county designated by the impaneling judge as the county in which the indictment shall be tried.

(2) Indictments returned by a state grand jury are properly triable in any county of the state where any of the alleged conduct occurred. The impaneling judge to whom the indictment is returned shall designate the county in which the indictment shall be tried. If a multicount indictment returned by a state grand jury is properly triable in a single proceeding as otherwise provided by law, all counts may be tried in the county designated by the impaneling judge notwithstanding the fact that different counts may have occurred in more than one (1) county.

(3) In determining the venue for indictments returned by a state grand jury, the impaneling judge shall select the county in which the state and defendant may receive a fair trial before an impartial jury taking into consideration the totality of the circumstances of each case.

(4) When the indictment has been returned to the circuit clerk of the county designated by the impaneling judge, the capias shall be issued as otherwise provided by law. The indictment shall be kept secret until the defendant is in custody or has been released pending trial.

HISTORY: Laws, 1993, ch. 553, § 18; reenacted without change, Laws, 1998, ch. 382, § 18; reenacted without change, Laws, 1999, ch. 480, § 18; reenacted without change, Laws, 2002, ch. 471, § 18; reenacted without change, Laws, 2011, ch. 337, § 18; reenacted without change, Laws, 2014, ch. 526, § 18, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-37. Immunity or privilege given on account of testimony; waiver [Repealed effective July 1, 2024].

If any person asks to be excused from testifying before a state grand jury or from producing any books, papers, records, correspondence or other documents before a state grand jury on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty or forfeiture and such person, notwithstanding such ground, is directed by the impaneling judge to give the testimony or produce the evidence, he shall comply with this direction, but no testimony so given or evidence produced may be received against him in any criminal action, investigation or criminal proceeding. No individual testifying or producing evidence or documents is exempt from prosecution or punishment for any perjury committed by him while so testifying, and the testimony or evidence given or produced is admissible against him upon any criminal action, criminal investigation or criminal proceeding concerning this perjury; however, any individual may execute, acknowledge and file a statement with the appropriate court expressly waiving immunity or privilege in respect to any testimony given or produced and thereupon the testimony or evidence given or produced may be received or produced before any judge or justice, court tribunal, grand jury or otherwise, and if so received or produced, the individual is not entitled to any immunity or privilege on account of any testimony he may give or evidence produced.

HISTORY: Laws, 1993, ch. 553, § 19; reenacted without change, Laws, 1998, ch. 382, § 19; , reenacted without change, Laws, 1999, ch. 480, § 19; reenacted without change, Laws, 2002, ch. 471, § 19; reenacted without change, Laws, 2011, ch. 337, § 19; reenacted without change, Laws, 2014, ch. 526, § 19, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

ALR.

Privilege against self-incrimination as to testimony before grand jury. 38 A.L.R.2d 225.

Use in disbarment proceeding of testimony given by attorney in criminal proceeding under grant of immunity. 62 A.L.R.3d 1145.

Refusal to answer questions before state grand jury as direct contempt of court. 69 A.L.R.3d 501.

Admissibility of former testimony of nonparty witness, present in jurisdiction, who refuses to testify at subsequent trial without making claim of privilege. 92 A.L.R.3d 1138.

Privilege of news gatherer against disclosure of confidential sources or information. 99 A.L.R.3d 37.

Privilege of witness to refuse to give answers tending to disgrace or degrade him or his family. 88 A.L.R.3d 304.

Propriety of blanket or per se rule prohibiting federal grand jury from indicting witness who has previously testified before same grand jury under grant of use immunity. 139 A.L.R. Fed. 489.

Am. Jur.

38 Am. Jur. 2d Grand Jury § 51.

Lawyers' Edition.

Supreme Court's views as to application of Fifth Amendment privilege against self-incrimination to compulsory production of documents. 48 L. Ed. 2d 852.

§ 13-7-39. Sealing of records, orders and subpoenas of grand jury [Repealed effective July 1, 2024].

Records, orders and subpoenas related to state grand jury proceedings shall be kept under seal to the extent and for the time that is necessary to prevent disclosure of matters occurring before a state grand jury.

HISTORY: Laws, 1993, ch. 553, § 20; reenacted without change, Laws, 1998, ch. 382, § 20; reenacted without change, Laws, 1999, ch. 480, § 20; reenacted without change, Laws, 2002, ch. 471, § 20; reenacted without change, Laws, 2011, ch. 337, § 20; reenacted without change, Laws, 2014, ch. 526, § 20, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d Grand Jury §§ 53-56.

§ 13-7-41. Space for grand jury; cooperation of Department of Public Safety and Bureau of Narcotics [Repealed effective July 1, 2024].

The Attorney General shall make available suitable space for state grand juries to meet. The Mississippi Department of Public Safety and the Mississippi Bureau of Narcotics may provide such services as required by the Attorney General and the state grand juries.

HISTORY: Laws, 1993, ch. 553, § 21; reenacted without change, Laws, 1998, ch. 382, § 21; reenacted without change, Laws, 1999, ch. 480, § 21; reenacted without change, Laws, 2002, ch. 471, § 21; reenacted without change, Laws, 2011, ch. 337, § 21; reenacted without change, Laws, 2014, ch. 526, § 21, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-43. Authority of Supreme Court to promulgate rules for operation of grand jury system [Repealed effective July 1, 2024].

The Supreme Court may promulgate rules as are necessary for the operation of the state grand jury system established by this chapter.

HISTORY: Laws, 1993, ch. 553, § 23; reenacted without change, Laws, 1998, ch. 382, § 22; reenacted without change, Laws, 1999, ch. 480, § 22; reenacted without change, Laws, 2002, ch. 471, § 22; reenacted without change, Laws, 2011, ch. 337, § 22; reenacted without change, Laws, 2014, ch. 526, § 22, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-45. Severability provision [Repealed effective July 1, 2024].

If any part of this chapter is declared invalid, unenforceable or unconstitutional by a court of competent jurisdiction, that part shall be severable from the remaining portions of this chapter, which portions shall remain in full force and effect as if the invalid, unenforceable or unconstitutional portion were omitted.

HISTORY: Laws, 1993, ch. 553, § 24; reenacted without change, Laws, 1998, ch. 382, § 23; reenacted without change, Laws, 1999, ch. 480, § 23; reenacted without change, Laws, 2002, ch. 471, § 23; reenacted without change, Laws, 2011, ch. 337, § 23; reenacted without change, Laws, 2014, ch. 526, § 23, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-47. Retroactivity of chapter [Repealed effective July 1, 2024].

This chapter applies to offenses committed both before and after its effective date.

HISTORY: Laws, 1993, ch. 553, § 25; reenacted without change, Laws, 1998, ch. 382, § 24; reenacted without change, Laws, 1999, ch. 480, § 24; reenacted

without change, Laws, 2002, ch. 471, § 24; reenacted without change, Laws, 2011, ch. 337, § 24; reenacted without change, Laws, 2014, ch. 526, § 24, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

§ 13-7-49. Chapter does not amend, repeal or supersede other laws governing grand juries, investigations, indictments or prosecutions [Repealed effective July 1, 2024].

Nothing in this chapter shall be construed as amending, repealing or superseding any other law of this state governing the powers and duties of county grand jurors, district attorneys or law enforcement agencies or other officials with regard to their authority to investigate, indict or prosecute offenses that are prescribed by this chapter as within the jurisdiction of the state grand jury.

HISTORY: Laws, 1993, ch. 553, § 26; reenacted without change, Laws, 1998, ch. 382, § 25; reenacted without change, Laws, 1999, ch. 480, § 25; reenacted without change, Laws, 2002, ch. 471, § 25; reenacted without change, Laws, 2011, ch. 337, § 25; reenacted without change, Laws, 2014, ch. 526, § 25, eff from and after July 1, 2014.

Editor's Notes — Laws of 1993, ch. 553, § 27, as amended by Laws of 1998, ch. 382 § 27, as amended by Laws of 1999, ch. 480, § 27, as amended by Laws of 2002, ch. 471, § 27, as amended by Laws of 2005, ch. 506, § 2, as amended by Laws of 2011, ch. 337, § 27, and as amended by Laws of 2014, ch. 526, § 27, provides:

"SECTION 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22 (codified as Section 99-11-3), shall stand repealed from and after July 1, 2024."

TITLE 15.

LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

Chapter 1. Limitation of Actions. 15-1-1
Chapter 3. Prevention of Frauds. 15-3-1

CHAPTER 1.

LIMITATION OF ACTIONS

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15-1-5. Period of limitations shall not be changed by contract.
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15-1-79. Limitations inapplicable to suits on certain obligations of banks and moneyed corporations.
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§ 15-1-1. Application of chapter.

The provisions of this chapter shall not apply to any suit which is or shall be limited by any statute to be brought within a shorter time than is prescribed in this chapter, and such suit shall be brought within the time that may be limited by such statute.

HISTORY: Codes, 1857, ch. 57, art. 24; 1871, § 2168; 1880, § 2689; 1892, § 2763a; 1906, § 3126; Hemingway's 1917, § 2490; 1930, § 2293; 1942, § 723.

Editor's Notes — Laws of 2005, 5th Ex Sess, ch. 8, § 1, effective October 6, 2005, provides as follows:

"SECTION 1. (1) As a result of the catastrophic impact of Hurricane Katrina, the statute of limitations applicable to any action not filed in any state or federal court or administrative forum as of August 29, 2005, for which venue was proper in a county located in the Second (Southern) Supreme Court District as defined by Section 9-3-1, Mississippi Code of 1972, is extended as follows:

"(a) If the statute of limitations expired on or after Monday, August 29, 2005, but before the effective date of this act, then the time for filing a claim shall be extended to Friday, December 30, 2005.

"(b) If the statute of limitations expires on or after the effective date of this act, but before Tuesday, November 29, 2005, then the time for filing a claim shall be extended to Friday, December 30, 2005.

"(2) For any action not filed in any state or federal court or administrative forum as of August 29, 2005, in which venue was proper only in a county located in either the First (Central) or Third (Northern) Supreme Court Districts as defined by Section 9-3-1, Mississippi Code of 1972, the plaintiff may file a motion asserting that, but for the catastrophic effects of Hurricane Katrina, the action would have been timely filed. If the court or administrative hearing officer grants the motion, the statute of limitations applicable to that action is extended as follows:

"(a) If the statute of limitations expired on or after Monday, August 29, 2005, but before the effective date of this act, then the time for filing a claim shall be extended to Friday, December 30, 2005.

"(b) If the statute of limitations expires on or after the effective date of this act, but before Tuesday, November 29, 2005, then the time for filing a claim shall be extended to Friday, December 30, 2005.

"(3) For purposes of the motion referred to in subsection (2), the plaintiff shall have the burden of proof."

Cross References — Actions to recover confiscated property, see § 25-1-51.

Actions by State Tax Commission, see § 27-3-41.

Actions by state to recover gasoline taxes, see § 27-55-37.

Actions to recover taxes on motor fuels other than gasoline, see § 27-55-545.

Actions to recover taxes on lubricating oils, see § 27-57-25.

Actions to recover taxes on liquified compressed gasses, see § 27-59-25.

Action on sales contracts, see § 75-2-725.

Effect of bank's customer to discover and report forgery or alteration of item, see § 75-4-406.

Actions for violations of the business tender offer law, see § 75-72-119.

Suits to annul marriages, see § 93-7-3.

Suit for trespass, see § 95-5-29.

Proceeding for relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-5.

JUDICIAL DECISIONS

1. In general.

Pursuant to Miss. Code Ann. § 11-46-11 of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 to 11-46-23, and Miss. Code Ann. § 15-1-1, Miss. Code Ann. § 15-1-69 did not apply to the MTCA, and it is worth noting that non-tort claims act cases are not controlling as to the applicability of § 15-1-69, and because the MTCA has a one-year statute of limitation that is significantly shorter than the catchall three-year statute of limitation, the one-year statute of limitation found in Miss. Code Ann. § 11-46-11 is controlling; thus, the court rejected the parents' claim that Miss. Code Ann. § 15-1-69 applied to the MTCA to toll the statute of limitations under Miss. Code Ann. § 11-46-11. Stockstill v. State, 854 So. 2d 1017, 2003 Miss. LEXIS 449 (Miss. 2003).

In view of the provisions of this section [Code 1942, § 723] as contained in Code 1906, § 3126, § 3127 [Code 1942, § 724] does not repeal or nullify the statutory provision forbidding any stipulation or condition in an insurance contract limiting the time within which a suit may be commenced to less than one year after loss or injury. Taylor v. Farmers' Fire Ins. Co., 101 Miss. 480, 58 So. 353, 1911 Miss. LEXIS 160 (Miss. 1911).

RESEARCH REFERENCES

ALR.

Inclusion or exclusion of first and last day for purposes of statute of limitations. 20 A.L.R.2d 1249.

What statute of limitation applies to action for surplus of proceeds from sale of collateral. 59 A.L.R.3d 1205.

When statute of limitations begins to run against action based on unwritten promise to pay money where there is no condition or definite time for repayment. 14 A.L.R.4th 1385.

What constitutes bringing an action to trial or other activity in case sufficient to avoid dismissal under state statute or court rule requiring such activity within stated time. 32 A.L.R.4th 840.

Time limits for salvage suits under 46 USCS § 730. 56 A.L.R. Fed. 542.

§ 15-1-3. Completion of limitation extinguishes right; partial payment.

(1) The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy. However, the former legal obligation shall be a sufficient consideration to uphold a new promise based thereon.

(2) In any case founded on a debt, when any part of the debt shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, the statute of limitations not having run, an action may be brought in such case within the period prescribed for the same, with the said period to begin after such payment, acknowledgment or promise.

HISTORY: Codes, 1880, § 2685; 1892, § 2755; 1906, § 3115; Hemingway's 1917, § 2479; 1930, § 2313; 1942, § 743; Laws, 2005, ch. 417, § 1, eff from and after July 1, 2005.

Cross References — Revival of remedies barred by lapse of time or statutes of limitation, see Miss. Const. Art. 4, § 97.

Barring of equity remedy on mortgage where remedy at law to recover debt is barred, see § 15-1-21.

Effect of action being barred in another jurisdiction, see § 15-1-65.

Limitation of setoff, see § 15-1-71.

Requirement that new promise be in writing, see § 15-1-73.

Application of statute of limitations in cases of joint interests, see § 15-1-75.

Apparent barring of lien on real or personal property, see § 89-5-19.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Extinguishment, effect of.
3. New promise.
4. Actions on mortgages and deeds of trust.

1. In general.

Prenuptial agreements were enforced by the State but the agreement had to be in writing; however, although the oral agreement between the husband and wife could not be enforced as a valid prenuptial agreement, it was not entirely meaningless as, whether intentionally or unintentionally fraudulent, it had to be considered by the chancellor when determining the equities of the case. Hankins v. Hankins, 866 So. 2d 508, 2004 Miss. App. LEXIS 125 (Miss. Ct. App. 2004).

Loans that were the subject of the individuals' complaint were all made in or before 1994, and yet the individuals filed suit on February 2, 2002, well over three years after the date of the last loan to any of the individuals, in violation of Miss. Code Ann. § 15-1-3. The individuals' causes of action did not survive because the individuals failed to identify any fraudulent concealment by a bank employee which, had it occurred and been proven, could have defeated the time bar, pursuant to Miss. Code Ann. § 15-1-67. Stacher v. Am. Gen. Fin., Inc., 2003 U.S. Dist. LEXIS 18713 (S.D. Miss. Mar. 7, 2003).

The 2-year statute of limitations set

forth in § 15-1-36, rather than the general 6-year limitation period of § 15-1-49, applied to a medical malpractice action against a nurse and a company that supplied nursing personnel, where the company's sole basis for liability was the fact that it was the nurse's employer; since § 15-1-36 specifically names nurses among those covered and the company's liability was predicated solely upon the doctrine of respondeat superior, the bar of the suit against the nurse likewise barred the action as to the company. Under § 15-1-3, § 15-1-36 barred both the right of action against the nurse and the company and also barred any remedy against both parties. Lowery v. Statewide Healthcare Service, Inc., 585 So. 2d 778, 1991 Miss. LEXIS 651 (Miss. 1991).

The doctrine of forum non conveniens will never be applied to dismiss a case if it is barred elsewhere by a statute of limitations, unless or until the defendant is willing to stipulate that he or she will waive the statute of limitations defense. Shewbrooks v. A.C. & S., Inc., 529 So. 2d 557, 1988 Miss. LEXIS 242 (Miss. 1988).

A garnishee which failed to file an answer to a writ of garnishment as required by § 11-35-25 and instead paid $10 per week of the judgment debtor's salary directly to the attorney for the judgment holder was liable to the debtor for monies wrongfully withheld after expiration of the judgment where, although the judgment and execution thereon had expired after seven years as provided in §§ 15-1-3, 15-1-43 and although the judgment holder had failed to file another suit on the judgment prior to the expiration of the seven years as required by § 15-1-47 to extend the judgment lien, the garnishee continued to pay the $10 per week to the judgment holder for two years after the judgment had lapsed. Anderson-Tully Co. v. Brown, 383 So. 2d 1389, 1980 Miss. LEXIS 2023 (Miss. 1980).

Where the assignment of a life insurance policy, as security for an indebtedness on the part of the insured to the assignee, stated that the assignment was to secure such indebtedness as might exist at the time of a settlement under the policy under Code 1942, § 743, which barred the right as well as the remedy, there was no indebtedness existing at the time of the insured's death, the debt being was barred by the statute of limitations, and the assignee had no right to any of the policy proceeds. Hawkins v. Southern Pipe & Supply Co., 259 So. 2d 696, 1972 Miss. LEXIS 1542 (Miss. 1972).

When secured debt is barred both the right and remedy are extinguished. McDaniel v. Short, 127 Miss. 520, 90 So. 186, 1921 Miss. LEXIS 254 (Miss. 1921).

The limitation pertaining to actions against executors and administrators may be invoked in an insolvency proceeding before the chancellor involving an insolvent estate, especially in view of the provisions of this section [Code 1942, § 743] declaring that when the remedy is barred the right also is barred. Rogers v. Rosenstock, 117 Miss. 144, 77 So. 958, 1918 Miss. LEXIS 158 (Miss. 1918).

The effect of the statute is not only to deny the remedy and bar the action, but to extinguish the right itself upon the completion of the period of limitation. Proctor v. Hart, 72 Miss. 288, 16 So. 595, 1894 Miss. LEXIS 103 (Miss. 1894).

2. Extinguishment, effect of.

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run, and the purchaser failed to take advantage of the many procedural mechanisms available to him to extend the life of his judgment; thus, the judgment had been extinguished, and the purchaser could not bring a valid garnishment action. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

Substitution of a son as the party in a wrongful death case was improper because a patient's brother lacked standing to bring the action originally; by the time the son filed an amended complaint, the limitations period in Miss. Code Ann. § 11-7-13 had expired, and the complaint did not relate back to a nullity, and therefore dismissal was warranted. Tolliver ex rel. Wrongful Death Beneficiaries of Green v. Mladineo, 987 So. 2d 989, 2007 Miss. App. LEXIS 467 (Miss. Ct. App. 2007).

In an action by a debtor against a bank to cancel the principal and interest in a promissory note and a deed of trust securing the note, the trial court properly considered a defunct judgment which had been obtained by the bank against the debtor and her husband in determining the debtor's liability to the bank where the defunct judgment was a sufficient basis to form the consideration for a component part of a new obligation entered into by the debtor; however, the trial court erred in computing the amount of consideration to include interest on the principal of the judgment debt beyond the seven years after the rendition of the judgment as provided in § 15-1-43. Under the provisions of § 75-17-7 interest should have been charged at the rate of eight percent per year for seven years to determine the amount of the former legal obligation where the note leading to the earlier judgment had provided for interest of eight percent per year. Keller v. Citizens Bank, Columbia, Miss., 399 So. 2d 1332, 1981 Miss. LEXIS 2008 (Miss. 1981).

Where a deed conveyed a depot site to a railroad company and contained a covenant running with the land that a public roadway should be kept open to the depot grounds for public convenience at and around the station, and the railroad failed for a period of more than 40 years to maintain a station on the conveyed property, the covenant was barred by the statute of limitations. White v. Mississippi Power & Light Co., 196 So. 2d 343, 1967 Miss. LEXIS 1483 (Miss. 1967).

Three-year statute barring open accounts destroys right as well as remedy; debt of child to father, barred by statute before his death, cannot be set off against child's share in estate; where only remedy is barred by statute of limitations, and debt is unaffected, debt of child to father, although barred by limitations, may be set off against child's share in father's estate. Greene v. Greene, 145 Miss. 87, 110 So. 218, 1926 Miss. LEXIS 2 (Miss. 1926).

Wholly distinct cause of action cannot be set up in amended bill where bar of limitations has become complete between filing of original and amended bill. Cox v. American Freehold & Land Mortg. Co., 88 Miss. 88, 40 So. 739, 1906 Miss. LEXIS 130 (Miss. 1906).

Under this section [Code 1942, § 743], a claim against a municipality, barred by limitation, ceases to be a debt, notwithstanding the provision of the statute that the former legal obligation shall be a sufficient consideration to uphold a new promise. It is the duty of municipal authorities to avail of the statute as a defense to demands on the municipal treasury. Trowbridge v. Schmidt, 82 Miss. 475, 34 So. 84, 1903 Miss. LEXIS 137 (Miss. 1903).

The allowance by municipal authorities of a demand barred by limitation is without consideration, and ultra vires, and mandamus will not lie to enforce the issuance of a warrant or to complete an imperfect one on such an allowance. Trowbridge v. Schmidt, 82 Miss. 475, 34 So. 84, 1903 Miss. LEXIS 137 (Miss. 1903).

Where a note for rent in which a vendor's lien is reserved is barred, giving a new note does not renew the lien or create a new one, but merely amounts to a new contract, with personal liability only. Proctor v. Hart, 72 Miss. 288, 16 So. 595, 1894 Miss. LEXIS 103 (Miss. 1894).

3. New promise.

An agreement indorsed on the back of a promissory note payable in full on a certain date, and signed by the maker, by the terms of which the maker agreed to pay the obligation in monthly instalments until the whole obligation plus interest had been paid, converted the note into an instalment note, and the statute of limitations began to run as to each instalment from the time it fell due. Freeman v. Truitt, 238 Miss. 623, 119 So. 2d 765, 1960 Miss. LEXIS 447 (Miss. 1960).

Where a second deed was executed to correct a former warranty deed for a recited consideration in the same amount as that recited in the first deed, and such consideration so recited in the second deed was unpaid, the six-year statute against action on the warranty began to run from the date on which the second deed was made, the second deed being a new promise of warranty based upon a former valid consideration. Wade v. Barlow, 99 Miss. 33, 54 So. 662, 1910 Miss. LEXIS 10 (Miss. 1910).

4. Actions on mortgages and deeds of trust.

Statement of claim in a probate proceeding was timely filed because the stay entered by a federal circuit court, prohibiting the creditor from foreclosing on the encumbered property pending the appeal, began the tolling of the filing period as to the promissory note. Therefore, the underlying claim was not extinguished. Avakian v. Wilmington Trust N.A. (In re Estate of Avakian), 231 So. 3d 208, 2017 Miss. App. LEXIS 201 (Miss. Ct. App.), cert. denied, 229 So. 3d 122, 2017 Miss. LEXIS 492 (Miss. 2017).

The running of limitation extinguishes both the note and the deed of trust securing it. Temples v. First Nat'l Bank, 239 Miss. 446, 123 So. 2d 852, 1960 Miss. LEXIS 305 (Miss. 1960).

The execution of a renewal note after the statute of limitations has run does not operate to revive a deed of trust securing it. Temples v. First Nat'l Bank, 239 Miss. 446, 123 So. 2d 852, 1960 Miss. LEXIS 305 (Miss. 1960).

In deciding whether the landowner is estopped to plead or obtain the benefit of the statute of limitations as a defense to an action to foreclose a deed of trust the question is resolved by the conduct of the landowner rather than the conduct of the grantee of deed of trust. Payne v. Smith, 221 Miss. 138, 72 So. 2d 234, 1954 Miss. LEXIS 522 (Miss. 1954).

Where grantee of a trust deed which was given as security for a debt, purchased at a foreclosure sale but never was in possession of the land, the grantee could not invoke the rule that a mortgagee in possession under void foreclosure sale may retain possession until the mortgage is paid despite the fact that the statute of limitations has run against the debt. Payne v. Smith, 221 Miss. 138, 72 So. 2d 234, 1954 Miss. LEXIS 522 (Miss. 1954).

Where in 1931 a deed of trust on certain land was issued to a bank as security for a loan, and later that land was sold at a tax sale and not redeemed, in 1939 the bank's remedy at law to recover the debt was barred by statute of limitations and direct remedy in equity was likewise barred. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

Section 722, Code of 1942, providing for six-year limitation period when no other period is prescribed, § 719, Code of 1942, barring action on mortgage when debt it secures is barred, and this section [Code 1942, § 743], operate to extinguish on September 1, 1935, deed of trust given to secure note falling due on September 1, 1929, and, in absence of renewal, or institution of foreclosure proceedings, power of sale and all other rights conferred by deed of trust are utterly destroyed on that date. Perkins v. White, 208 Miss. 157, 43 So. 2d 897, 1950 Miss. LEXIS 237 (Miss. 1950).

Statute covers "proceeding" to foreclose trust deed by exercise of power of sale contained in deed. Gates v. Chandler, 174 Miss. 815, 165 So. 442, 1936 Miss. LEXIS 210 (Miss. 1936).

Where neither notes nor mortgage were renewed until notes were barred, rights and remedies as to both notes and mortgage were barred and could not be revived. Musser v. First Nat'l Bank, 165 Miss. 873, 147 So. 783, 1933 Miss. LEXIS 311 (Miss. 1933).

Where senior mortgage barred, junior mortgagee and claimant under him were not bound to know facts not of record, nor estopped to claim priority and set up that attempted revival of senior mortgage was void. Musser v. First Nat'l Bank, 165 Miss. 873, 147 So. 783, 1933 Miss. LEXIS 311 (Miss. 1933).

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions §§ 21, 191.

17 Am. Jur. Pl & Pr Forms (Rev), Limitation of Actions, Form 11.1 (reply – allegation – statute of limitations invalid as violating right to due process).

CJS.

54 C.J.S., Limitations of Actions § 16.

§ 15-1-5. Period of limitations shall not be changed by contract.

The limitations prescribed in this chapter shall not be changed in any way whatsoever by contract between parties, and any change in such limitations made by any contracts stipulation whatsoever shall be absolutely null and void, the object of this section being to make the period of limitations for the various causes of action the same for all litigants.

HISTORY: Codes, 1906, § 3127; Hemingway's 1917, § 2491; 1930, § 2294; 1942, § 724.

JUDICIAL DECISIONS

ANALYSIS

1. Contracts with carriers.
2. Contracts with telegraph companies.
3. Insurance contracts.
4. —Time for bringing suit.
5. —Requirement of notice.
6. —Contracts made or to be performed in other states.
7. Home inspection contracts.
8. Miscellaneous.

1. Contracts with carriers.

46 USCS § 183b does not preempt Mississippi's prohibition against contractually shortening limitations periods (§ 15-1-5); thus, a 6-month time-to-sue provision in passengers' tickets was invalid. Johnson v. Commodore Cruise Lines, 897 F. Supp. 740, 1995 U.S. Dist. LEXIS 10424 (S.D.N.Y. 1995).

Stipulation in bill of lading for shipment of oxen that claim for loss must be verified and presented within 10 days, is invalid. Illinois C. R. Co. v. Jordan, 108 Miss. 140, 66 So. 406, 1914 Miss. LEXIS 180 (Miss. 1914).

Time limit in shipping contract against suit for loss of goods must be reasonable and carrier must promptly deny liability. Lasky v. Southern Express Co., 92 Miss. 268, 45 So. 869, 1908 Miss. LEXIS 187 (Miss. 1908).

2. Contracts with telegraph companies.

Stipulation in contract with telegraph company exempting it from liability for errors or delays unless claim presented in writing within 60 days after message filed for transmission, is invalid. Dodson v. Western Union Tel. Co., 97 Miss. 104, 52 So. 693, 1910 Miss. LEXIS 263 (Miss. 1910).

3. Insurance contracts.

This section [Code 1942, § 724] does not make insurance clause providing for disability benefits on proof of disability furnished company before anniversary date of policy nearest insured's attained age of sixty years invalid as changing by contract statute of limitations since this clause of contract prescribes condition upon which liability may arise and does not prescribe a time when suit may be brought after liability accrues. Cox v. Lamar Life Ins. Co., 208 Miss. 146, 43 So. 2d 884, 1950 Miss. LEXIS 236 (Miss. 1950).

This section [Code 1942, § 724] was not violated by a holding that a cause of action for permanent disability benefits under a group insurance policy did not arise until due proof thereof, as required in the policy for payment of permanent disability benefits, was made. Metropolitan Life Ins. Co. v. Lindsey, 184 Miss. 359, 185 So. 573, 1939 Miss. LEXIS 30 (Miss. 1939).

This section [Code 1942, § 724] has no application to provisions of a life insurance policy for return of premiums. Mutual Life Ins. Co. v. Hebron, 166 Miss. 145, 146 So. 445, 1933 Miss. LEXIS 344 (Miss. 1933).

This section [Code 1942, § 724] has no application to provision of life policy fixing conditions precedent to liability for payment of disability benefits. Mutual Life Ins. Co. v. Hebron, 166 Miss. 145, 146 So. 445, 1933 Miss. LEXIS 344 (Miss. 1933).

This section [Code 1942, § 724] did not prevent life insurer from making proof of disability of condition precedent to waiver of premiums. Berry v. Lamar Life Ins. Co., 165 Miss. 405, 142 So. 445, 145 So. 887, 1932 Miss. LEXIS 272 (Miss. 1932).

4. —Time for bringing suit.

Arbitration agreement was not invalid merely because it attempted to shorten the limitation period provided in Miss. Code Ann. § 15-1-5; the court could have striken that portion of the agreement and the remainder of the arbitration provision would have remained valid. Russell v. Performance Toyota, Inc., 826 So. 2d 719, 2002 Miss. LEXIS 288 (Miss. 2002).

The provisions of a fidelity bond to the effect that the action thereon must be commenced within one year from the date when the insured discovers a loss are violative of this section [Code 1942, § 724] and null and void. Latham v. United States Fidelity & Guaranty Co., 267 So. 2d 895, 1972 Miss. LEXIS 1431 (Miss. 1972).

Provision in fidelity bond limiting liability to losses discovered within certain period held not invalid as changing statutory limitation period for bringing suit. Webster v. United States Fidelity & Guaranty Co., 169 Miss. 472, 153 So. 159, 1934 Miss. LEXIS 54 (Miss. 1934).

Stipulation that suit on policy must be brought within 12 months after loss held void. Stuyvesant Ins. Co. v. A. C. Smith Motor Sales Co., 135 Miss. 585, 99 So. 575, 1924 Miss. LEXIS 21 (Miss. 1924).

Provision in new constitution of insurance company limiting time for suit held void. Sovereign Camp, W. O. W. v. Miller, 125 Miss. 502, 87 So. 892, 1921 Miss. LEXIS 132 (Miss. 1921).

This section [Code 1942, § 724] does not repeal or nullify Code 1906 § 2575 forbidding any stipulation in an insurance contract limiting the time within which a suit may be commenced to less than one year after loss or injury, in view of Code 1906, § 3126 [Code 1942, § 723]. Taylor v. Farmers' Fire Ins. Co., 101 Miss. 480, 58 So. 353, 1911 Miss. LEXIS 160 (Miss. 1911).

5. —Requirement of notice.

An insurer which issued a medical malpractice policy to certain doctors on a "claims made basis" was not liable to an injured patient who had not, as required by the policy, made a timely claim against the doctor where such policy limitations were valid conditions precedent to the insurer's liability and were not impermissible attempts to shorten the applicable six-year statute of limitations. Brander v. Nabors, 443 F. Supp. 764, 1978 U.S. Dist. LEXIS 20195 (N.D. Miss.), aff'd, 579 F.2d 888, 1978 U.S. App. LEXIS 9234 (5th Cir. 1978).

Provisions of physician's liability policy requiring physician to give notice of claim for malpractice, to forward to insurer process served on physician, and to co-operate with insurer held not violative of statute prohibiting contractual changes in statutory periods of limitation, since provisions related to conditions precedent to liability on policy. Aetna Life Ins. Co. v. Walley, 174 Miss. 365, 164 So. 16, 1935 Miss. LEXIS 58 (Miss. 1935).

Under this statute [Code 1930, § 2294] accident policy provision requiring written notice within twenty days after accident held void. National Casualty Co. v. Mitchell, 162 Miss. 197, 138 So. 808, 1932 Miss. LEXIS 113 (Miss. 1932).

Provision in accident policy requiring written notice to insurer within 15 days after accident, is void. Standard Acc. Ins. Co. v. Broom, 111 Miss. 409, 71 So. 653, 1916 Miss. LEXIS 311 (Miss. 1916).

6. —Contracts made or to be performed in other states.

Where on former appeals, terminating in a decision by the Federal Supreme Court, the point raised by demurrer to insurer's plea involved the question whether a provision in a fidelity bond requiring any claim thereunder to be made within 15 months after the termination of the suretyship was subject to the law of Tennessee where the contract was made at a time when the insured was then located in Tennessee, or subject to the laws of Mississippi, to which insured had removed and where the defalcation occurred, and resulted in a determination that the laws of Tennessee governed, such determination did not preclude subsequent litigation as to the effect of such provision under Tennessee decisions as being a condition precedent to liability of the insurer or merely a postponement of the right to sue. Hartford Acci. & Indem. Co. v. Delta & Pine Land Co., 189 Miss. 496, 195 So. 667, 1940 Miss. LEXIS 100 (Miss.), cert. denied, 311 U.S. 610, 61 S. Ct. 25, 85 L. Ed. 387 (U.S. 1940).

Group policy which was performable and was delivered in Alabama was governed by Alabama laws, notwithstanding that insured employee was a resident of Mississippi, had never been in Alabama, and insured employer operated its buses only in Mississippi, and notwithstanding statute requiring court to solve interpretation of contract of insurance according to the laws of Mississippi, since a contrary construction would result in the denial of due process. Protective Life Ins. Co. v. Lamarque, 180 Miss. 243, 177 So. 15, 1937 Miss. LEXIS 104 (Miss. 1937).

Appellant was deprived of due process when lower court held that indemnity bond, contracted for in Tennessee, being insurance contract, was solvable under laws of Mississippi in determining liability for loss in Mississippi, as regards construction of provision respecting time for making claim. Hartford Accident & Indem. Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 1934 U.S. LEXIS 703 (U.S. 1934).

This statute [Code 1930, § 2294] may not constitutionally be applied to employee's fidelity insurance contract entered into in another state, although the default occurred after the removal of the insured and his employee to the state. Hartford Accident & Indem. Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 1934 U.S. LEXIS 703 (U.S. 1934).

7. Home inspection contracts.

Home inspector overreached in his attempt to contractually create a private statute of limitations with two home buyers as the three-year statute of limitations under Miss. Code Ann. § 15-1-49 could not be changed by contract; the attempt to change the statute of limitations was void under Miss. Code Ann. § 15-1-5 and was substantively unconscionable. Pitts v. Watkins, 905 So. 2d 553, 2005 Miss. LEXIS 260 (Miss. 2005).

8. Miscellaneous.

Claim by homeowners against a builder under the New Home Warranty Act (NHWA), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHWA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. Townes v. Rusty Ellis Builder, Inc., 98 So. 3d 1046, 2012 Miss. LEXIS 483 (Miss. 2012).

When homeowners and a builder entered into an agreement purportedly tolling limitations periods applicable to the homeowners' claims against the builder for structural defects in the homeowners' home, the homeowners' common-law claims were time-barred because (1) the claims fell under Miss. Code Ann. § 15-1-41's statute of repose, and (2) Miss. Code Ann. § 15-1-5 barred contracts to change a limitations period. Townes v. Rusty Ellis Builder, Inc., 98 So. 3d 1046, 2012 Miss. LEXIS 483 (Miss. 2012).

In a dispute involving a promissory note, the plain language of the note did not operate to excuse a creditor from asserting legal rights in a timely manner; moreover, Miss. Code Ann. § 15-1-5 rendered any changes to the statute of limitations in the promissory note null and void. Chimento v. Fuller, 965 So. 2d 668, 2007 Miss. LEXIS 543 (Miss. 2007).

Mississippi Supreme Court would not enforce a contractually created time limitation on suits, as modifications to the statute of limitations could not be accomplished by contract, and any attempt to do so would be void; accordingly, the admissions contract between the decedent and nursing home which attempted to modify the statute of limitations was properly struck as unconscionable. Covenant Health Rehab of Picayune, L.P. v. Brown, 949 So. 2d 732, 2007 Miss. LEXIS 43 (Miss. 2007), overruled in part, Covenant Health & Rehab. of Picayune, LP v. Estate of Moulds, 14 So. 3d 695, 2009 Miss. LEXIS 369 (Miss. 2009).

Provision of contract for extermination of pests which limited homeowner's remedy for breach of express warranty to reinspection and refumigation in event of reinfestation, was enforceable under Mississippi law. Facts did not fall within protections afforded by §§ 11-7-18 or 75-2-

315.1, and litigation not involve claim for breach of implied warranties. Moreover, even if defendant had attempted to limit implied warranties, plaintiff did not seek remedies based thereon. In addition, contract was one primarily for service, whereas prohibition on limitation of express warranties applies only to manufacturer of consumer goods, thus there was nothing in Mississippi statutes forbidding limitation of remedies for breach of express warranty provided in service contract. Smith v. Orkin Exterminating Co., 791 F. Supp. 1137, 1990 U.S. Dist. LEXIS 19936 (S.D. Miss. 1990), aff'd, 943 F.2d 1314, 1991 U.S. App. LEXIS 21363 (5th Cir. Miss. 1991).

Provision in contract for extermination of pets establishing one-year period of limitations, in violation of § 15-1-5, did not render contract's limitation of liability clause unenforceable where clauses were not mutually dependent and allegedly unenforceable clause could be easily severed from remainder of contract without reforming substance of contract. Smith v. Orkin Exterminating Co., 791 F. Supp. 1137, 1990 U.S. Dist. LEXIS 19936 (S.D. Miss. 1990), aff'd, 943 F.2d 1314, 1991 U.S. App. LEXIS 21363 (5th Cir. Miss. 1991).

OPINIONS OF THE ATTORNEY GENERAL

Any attempt to require contract terms seeking to limit the liability of a private vendor or specifying a limitation period different than the general limitations period prescribed for contractual claims would be unenforceable. Thomas, Dec. 2, 2003, A.G. Op. 03-0629.

RESEARCH REFERENCES

ALR.

Validity of contractual waiver of statute of limitations. 1 A.L.R.2d 1445.

Waiver or tolling of statute of limitations by executor or administrator. 8 A.L.R.2d 660.

Validity of contractual time period, shorter than statute of limitations, for bringing action. 6 A.L.R.3d 1197.

Validity of contractual provision establishing period of limitations longer than that provided by state statute of limitations. 84 A.L.R.3d 1172.

Validity, construction, and application, in nonstatutory personal injury actions, of state statute providing for borrowing of statute of limitations of another state. 41 A.L.R.4th 1025.

Insurer's waiver of defense of statute of limitations. 104 A.L.R.5th 331.

Am. Jur.

51 Am. Jur. 2d, Limitations of Actions §§ 79 et seq.

7 Am. Jur. Pl & Pr Forms (Rev), Contracts, Form 13.1 (answer – defense – statute of limitations).

12 Am. Jur. Legal Forms 2d, Limitation of Actions § 167:10 (statutory limitation period to govern should contractual period be prohibited).

§ 15-1-7. Limitations applicable to actions to recover land.

A person may not make an entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or to bring the action shall have first accrued to some person through whom he claims, or, if the right shall not have accrued to any person through whom he claims, then except within ten years next after the time at which the right to make the entry or bring the action shall have first accrued to the person making or bringing the same. However, if, at the time at which the right of any person to make an entry or to bring an action to recover land shall have first accrued, such person shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of ten years hereinbefore limited shall have expired, make an entry or bring an action to recover the land at any time within ten years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed, by reason of the disability of any other person, to make an entry or to bring an action to recover the land beyond the period of ten years next after the time at which such person shall have died.

HISTORY: Codes, Hutchinson's 1848, ch. 57, arts. 1 (1), 6 (1); 1857, ch. 57, art. 1; 1871, § 2147; 1880, § 2664; 1892, § 2730; 1906, § 3090; Hemingway's 1917, § 2454; 1930, § 2285; 1942, § 709.

Cross References — Legislature's power to revive barred actions, see Miss. Const. Art. 4, § 97.

Running of statutes of limitation against state or subdivision thereof, see Miss. Const. Art. 4, § 104.

Confirmation of title to land and removal of clouds upon titles, see §§ 11-17-29, 11-17-31.

Ejectment, see §§ 11-19-1 through 11-19-105.

Statute of limitations in cases of unlawful entry and detainer, see § 11-25-1.

Limitation of actions arising from easements for highway purposes, see § 65-1-49.

Conveyance of land generally, see §§ 89-1-1 through 89-1-45.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
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1. In general.

Since accrued royalties were personal property and not an interest in land, Miss. Code Ann. § 15-1-7 was inapplicable; there being no specific statute of limitations for actions seeking recovery of accrued royalties, the general, three-year statute of Miss. Code Ann. § 15-1-49(1) required the trustee to bring the action against the oil companies within three years next after the cause of such action accrued. Nygaard v. Getty Oil Co., 918 So. 2d 1237, 2005 Miss. LEXIS 422 (Miss. 2005).

Statute of limitations argument was waived on appeal because it was not raised in the answer; the bank customers' possession of the property was never adverse to that of the bank's lien interest at any time prior to the 1997 renewal, and the bank did not seek reformation of the 1988 deed of trust, but rather the 1997 deed of trust, such that there would be no statute of limitations issue even if the defense had been raised. Whitefoot v. BancorpSouth Bank, 856 So. 2d 639, 2003 Miss. App. LEXIS 591 (Miss. Ct. App. 2003), cert. denied, 866 So. 2d 473, 2004 Miss. LEXIS 206 (Miss. 2004), cert. denied, 543 U.S. 833, 125 S. Ct. 148, 160 L. Ed. 2d 52, 2004 U.S. LEXIS 5851 (U.S. 2004).

Ten-year statute of limitation for actions to recover land did not start to run when the beneficiary took possession of the elderly widow's property in 1982 as part of his long-term plan and scheme to obtain her property through fraud and undue influence, but instead began to run when the elderly widow's heirs had notice of the existence of an attempted deed, which did not occur until 1997 when the widow died, especially since the widow was not in possession in the interim. Cupit v. Pluskat (In re Estate of Reid), 2001 Miss. LEXIS 320 (Miss. Dec. 13, 2001).

The 10-year limitation provided for in the statute did not apply to an action by a judgment creditor in which it alleged that the judgment debtor fraudulently conveyed real property to his son as the judgment creditor had no possessory interest in the subject property. O'Neal Steel, Inc. v. Millette, 797 So. 2d 869, 2001 Miss. LEXIS 31 (Miss. 2001).

Miss. Code Annotated § 15-1-59 does not place maximum durational limit on savings provision of § 15-1-7, as had Mississippi Legislature intended for savings clause in § 15-1-7 to have maximum duration it would have included such limit in § 15-1-7, as Legislature has in other statutes of limitations provisions, and further, § 15-1-59 is not statute of limitations. Talbert v. Henderson, 688 F. Supp. 250, 1987 U.S. Dist. LEXIS 13869 (S.D. Miss. 1987).

In an action to quiet title based on a 1934 deed, the statute of limitations was properly invoked in defense to a cross-bill seeking to cancel the claim for failure of consideration because the conveyance was at most voidable and actions to set aside voidable conveyances are subject to limitation. Covington v. Butler, 242 So. 2d 444, 1970 Miss. LEXIS 1381 (Miss. 1970).

A conveyance of land executed to a corporation in violation of the Mississippi Blue Sky Law (Laws 1916, Ch 97) was utterly void and imparted no notice to subsequent purchasers, nor did it set in motion the running of the 10-year statute of limitations. Mississippi State Highway Com. v. Smith, 197 So. 2d 212, 1967 Miss. LEXIS 1503 (Miss. 1967).

This section [Code 1942, § 709] and Code 1942, § 710 are to be considered together. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

The statute requiring commencement of action to recover land ten years after right to do so accrues, did not apply to a suit to cancel as cloud on title claim asserted by husband who pleaded guilty to manslaughter in the death of his wife. Henry v. Toney, 217 Miss. 716, 64 So. 2d 904, 1953 Miss. LEXIS 484 (Miss. 1953).

Purpose and intent of Code 1942, §§ 710 and 711, and this section [Code 1942, § 709], is to guarantee good title to one purchasing land in good faith from another, where such other went into possession under recorded deed, valid on its face, and continued in uninterrupted possession for period of 31 years or more. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

Save as to easements, licenses or mere equities, abandonment is not effective to divest title to real estate, and fee simple titles are lost only by estoppel or by adverse possession or by maintainable tax sale. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

The principle upon which the statute rests is not that the party in whose favor it is evoked has set up an adverse claim for the period prescribed, but that the adverse claim is accompanied by such an invasion of the rights of the opposite party as to give him a cause of action. Magee v. Magee, 37 Miss. 138, 1859 Miss. LEXIS 10 (Miss. 1859).

2. Application.

Statute of limitations did not bar a brother's suit seeking to set aside a deed to the family farm from their mother to a revocable trust on the ground of undue influence because the applicable statute of limitations was ten years for actions to recover land. Hodnett v. Hodnett, 269 So. 3d 317, 2018 Miss. App. LEXIS 189 (Miss. Ct. App.), cert. denied, 258 So. 3d 287, 2018 Miss. LEXIS 527 (Miss. 2018).

Chancery court erred in dismissing an administrator's complaint against the decedent's sister and her transferees as untimely because the chancellor applied the wrong statute of limitations and the administrator, as both administrator and individually as a possible heir of the decedent, sought possession of the real property deeded away by the decedent, allegedly due to undue influence, which in a similar situation, the state supreme court held that the 10-year statute of limitations for actions to recover land applied. Bryant v. Dent, 270 So. 3d 976, 2018 Miss. App. LEXIS 453 (Miss. Ct. App. 2018).

Mortgagor's wrongful foreclosure claim was time-barred under Miss. Code Ann. § 15-1-49 as it was filed 10 years after the foreclosure; Miss. Code Ann. § 15-1-7 applied to actions to recover land, not to actions for wrongful. foreclosure. Tenn. Props. Inc. v. Gillentine, 66 So. 3d 695, 2011 Miss. App. LEXIS 329 (Miss. Ct. App. 2011).

Chancellor did not err in dismissing a nephew's case against his uncles on the ground that his claim was time-barred pursuant to Miss. Code Ann. § 91-7-309 because the ten-year statute of limitations contained in Miss. Code Ann. § 15-1-7 did not apply because the case was not an action to recover land; the nephew's claim was an attempt to reopen a decedent's estate because his arguments were an attempt to attack and falsify the final accounting of the decedent's estate. Walton v. Walton, 52 So. 3d 468, 2011 Miss. App. LEXIS 32 (Miss. Ct. App. 2011).

Summary judgment was properly granted to a trustee in a prior owner's action to set aside a warranty deed transfer and a trust six years later because the three-year statute of limitations in Miss. Code Ann. § 15-1-49 applied, rather than the ten-year period in Miss. Code Ann. § 15-1-7. Concealed fraud did not toll the limitations period since the instrument here was recorded as a matter of public record. McWilliams v. McWilliams, 970 So. 2d 200, 2007 Miss. App. LEXIS 779 (Miss. Ct. App. 2007), overruled, Lott v. Saulters, 133 So. 3d 794, 2014 Miss. LEXIS 53 (Miss. 2014).

3. Equitable actions.

Bank's claim for equitable subrogation was barred by the statute of limitations based on the date of payment of the balance of a line of credit, since the bank's lien did not create a possessory interest in the liened property to support an action to recover land subject to a longer limitations period. U.S. Bank N.A. v. State Bank & Trust Co., 45 F. Supp. 3d 582, 2014 U.S. Dist. LEXIS 95934 (S.D. Miss. 2014).

In an action by a widow to recover 50 percent of various mineral rights purchased by her deceased husband in a joint venture with defendant's deceased husband in which the theory of recovery was an implied trust or right to a partnership accounting, the chancery court erroneously granted judgment for plaintiff, where the cause of action was barred by the applicable ten year statutes of limitation at least as early as 1962, which was 10 years after the death of defendant's husband. Stebbins v. Hayes, 379 So. 2d 898, 1980 Miss. LEXIS 1836 (Miss. 1980).

Action by the successors of royalty deed grantor to cancel the claims of the grantees' successors to any interest in the mineral estate exceeding 3/1$_6$ths of 1/8th of the whole of all minerals, except sulphur, was not barred by the statute of limitations where the grantees' successors had neither title nor possession of any interest in excess of the 3/1$_6$ths of the 1/8th of the whole. Payne v. Campbell, 250 Miss. 227, 164 So. 2d 780, 1964 Miss. LEXIS 458 (Miss. 1964).

Suit to cancel quitclaim deed given without consideration, twelve years after death of grantee and after title to mineral rights had passed to innocent purchasers, held barred. Williams v. Phoenix Minerals Corp., 247 Miss. 697, 158 So. 2d 51, 1963 Miss. LEXIS 347 (Miss. 1963).

Where there was a suit to cancel and remove some alleged clouds from the title of property which was sold under a bond mortgage to satisfy an indebtedness owing to a Louisiana corporation, in liquidation, the fact that the suit was filed just two days before the completion of the bar of ten-year statute of limitations, should not bar the action because of laches. Enochs v. Mississippi Tower Bldg., Inc., 210 Miss. 676, 50 So. 2d 551, 1951 Miss. LEXIS 307 (Miss. 1951).

This section [Code 1942, § 709] applies to a bill to set aside a deed and to hold grantee as trustee of the land for benefit of complainants, neither the three-year limitation period of Code 1942, § 729 nor the six-year period of Code 1942, § 722 being applicable when accounting feature contained in bill is merely incidental. Burton v. Gibbes, 204 Miss. 248, 37 So. 2d 285, 1948 Miss. LEXIS 359 (Miss. 1948).

Statutory limitation on equity suit to recover land held not to apply to suit to reform deed by person whose possession and payment of taxes through predecessors in title exceeds forty-five years. Newman v. J. J. White Lumber Co., 162 Miss. 581, 139 So. 838, 1932 Miss. LEXIS 148 (Miss. 1932).

This section [Code 1942, § 709] applies to a suit to cancel, as a cloud, a title acquired through sale under partition proceedings, neither the two-year statute of limitations (§ 2693, Code of 1880), nor Code 1880, § 2568, establishing the effect of a final decree in partition proceedings being applicable. Foster v. Gulf Coast Canning Co., 71 Miss. 624, 15 So. 931, 1893 Miss. LEXIS 131 (Miss. 1893).

4. Adverse possession.

Adverse possession was established by evidence that possessors cleared land and planted grass, grazed cattle on land, repaired damage caused by hurricane, built and repaired fish pond, paid taxes in all but 2 years, frequently visited property, and made other improvements; titleholder's nonpayment of taxes coupled with awareness that grass was planted and cattle were grazed on pastures gave rise to notice of adverse claim. Ramsey v. Copiah Bank, N.A., 678 So. 2d 637, 1996 Miss. LEXIS 208 (Miss. 1996).

Adverse possession does not operate to vest title while the city holds a tax title to the land. Grayson v. Robinson, 240 Miss. 59, 126 So. 2d 247, 1961 Miss. LEXIS 429 (Miss. 1961).

Insufficiency of a line fence to turn stock does not affect its operation as notice of adverse possession. Grayson v. Robinson, 240 Miss. 59, 126 So. 2d 247, 1961 Miss. LEXIS 429 (Miss. 1961).

This section [Code 1942, § 709] and Code 1942, § 710 are limitation statutes which may be used defensively only, as distinguished from Code 1942, § 711, which provides that 10 years' adverse possession vests full title, and which accordingly may be used affirmatively and defensively. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

This provision [Code 1942, § 709] does not apply except where the person invoking it has been in adverse possession of land against the true owner. Continental Oil Co. v. Walker, 238 Miss. 21, 117 So. 2d 333, 1960 Miss. LEXIS 371 (Miss. 1960).

Where minerals had been severed from the surface, and defendants, claiming under color of title of a void tax deed, although exercising acts of ownership of which the surface was susceptible, had never taken actual possession of any of the minerals, they did not acquire rights to the minerals by adverse possession, so that plaintiffs, who held mineral rights to the land through inheritance from the grantor of the surface rights, did not lose their rights to the minerals by limitations or laches. White v. Merchants & Planters Bank, 229 Miss. 35, 90 So. 2d 11, 1956 Miss. LEXIS 583 (Miss. 1956).

The statutes of limitation do not begin to run against one in actual or constructive possession of lands until an adverse entry has been made. Leech v. Masonite Corp., 219 Miss. 176, 68 So. 2d 297, 1953 Miss. LEXIS 379 (Miss. 1953).

To acquire land by adverse possession, for possession must not only continue for the statutory period but it must be exclusive and hostile. Grantham v. Masonite Corp., 218 Miss. 745, 67 So. 2d 727, 1953 Miss. LEXIS 599 (Miss. 1953).

To acquire land by adverse possession, the adverse possessor must have had the intention to appropriate and use the land as his own to the exclusion of all others, irrespective of any semblance or shadow of actual title or right. Grantham v. Masonite Corp., 218 Miss. 745, 67 So. 2d 727, 1953 Miss. LEXIS 599 (Miss. 1953).

When it is clear that there is no intention to claim against the true owner, the possession will not be adverse, and however long continued will not bar his right of entry. Grantham v. Masonite Corp., 218 Miss. 745, 67 So. 2d 727, 1953 Miss. LEXIS 599 (Miss. 1953).

In application of this section [Code 1942, § 709], mere lapse of time does not suffice, but possession relied upon by claimant of land must exist to support plea of limitation the same as if he were claiming land under and by virtue of possession held under Code 1942, § 711. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

Complainant entering under invalid tax deed failed to meet burden of proof to establish ten years adverse possession where evidence disclosed that no use was made of the land after tax sale except cultivation of small patches, that land was unimproved, and that there was no actual occupancy of the land by anyone. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

Where the description of land sold at a tax sale did not cover all of the land on which the taxes had been levied, a purchaser from the state, who occupied the entire tract had no valid claim, as against the original owners, to that portion of the land not included in such description, and title thereto would not be lost to the original owner through any doctrine of laches short of the ten-year statute of limitations. Johnson v. Carter, 193 Miss. 781, 11 So. 2d 196, 1943 Miss. LEXIS 8 (Miss. 1943).

Title need not be recorded to bind bona fide purchasers from the original owner; purchaser from record owner must ascertain existence of adverse possession hostile thereto. Lowi v. David, 134 Miss. 296, 98 So. 684, 1924 Miss. LEXIS 255 (Miss. 1924).

Defense of adverse possession held sufficient, although occupation was under erroneous survey. Evans v. Harrison, 130 Miss. 157, 93 So. 737, 1922 Miss. LEXIS 194 (Miss. 1922); Schuler v. McGee, 127 Miss. 873, 90 So. 713, 1921 Miss. LEXIS 291 (Miss. 1921); Greer v. Pickett, 127 Miss. 739, 90 So. 449, 1921 Miss. LEXIS 277 (Miss. 1921).

Title by adverse possession is a perfect title and may be used both offensively and defensively. Scottish American Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666, 1910 Miss. LEXIS 14 (Miss. 1910).

Actual, open, and notorious possession may be shown by the acts of the occupant to have been adverse. Davis v. Bowmar, 55 Miss. 671, 1878 Miss. LEXIS 29 (Miss. 1878).

The adverse possession, to be available, must have been continuous. Nixon v. Porter, 38 Miss. 401, 1860 Miss. LEXIS 13 (Miss. 1860); Tegarden v. Carpenter, 36 Miss. 404, 1858 Miss. LEXIS 111 (Miss. 1858).

What constitutes adverse possession is a question of law, but the intention of the possessor, which is always material in determining, is a fact to be ascertained by the jury. Magee v. Magee, 37 Miss. 138, 1859 Miss. LEXIS 10 (Miss. 1859).

Visible and notorious occupation, with intent to claim against the world, constitutes adverse possession. So will any visible acts of ownership exercised over land, which, from their nature, indicate notorious claim of property in it, if continued for a long time, with the knowledge of the owner, and without interruption or adverse entry by him. Neither actual occupation, residence, nor cultivation is necessary to constitute adverse possession, where the property is so situated as not to admit of any permanent useful improvement. Ford v. Wilson, 35 Miss. 490, 1858 Miss. LEXIS 50 (Miss. 1858).

5. —Duration of possession.

Ten years' possession by purchaser on foreclosure of trust deed and successors held, notwithstanding deed on foreclosure was not given, to give title as against grantor of trust deed. American Petrofina, Inc. v. Warren, 247 Miss. 552, 156 So. 2d 729, 1963 Miss. LEXIS 324 (Miss. 1963).

Evidence showing that complainants entered into possession of parcel of land in 1942, under color of title by virtue of deed executed to them by a bank, and that complainants remained in possession of the land, claiming it as their own, and exercised acts of ownership on the land by cutting timber and pasturing cattle on the land, keeping the fences in state of repair, and paying taxes on the land for a period of 19 years, established complainants' title by adverse possession. Bickham v. Bates, 246 Miss. 171, 150 So. 2d 138, 1963 Miss. LEXIS 433 (Miss. 1963).

The grantees in a deed and their successors in title who had been in actual adverse possession of the entire interest in tract of land for more than ten years acquired title by adverse possession. Farmer v. Runnels, 244 Miss. 525, 142 So. 2d 198, 1962 Miss. LEXIS 472 (Miss. 1962).

Husband of tenant in common taking possession of land under purchase at a void judicial sale and holding with those under him for 10 years divests cotenants of title. Stewart v. Foxworth, 95 Miss. 442, 52 So. 354, 1909 Miss. LEXIS 311 (Miss. 1909).

Adverse possession for 10 years will defeat suit to set aside occupant's deed, on record for that length of time, on the ground that it was executed to defeat creditors. Gordon v. Anderson, 90 Miss. 677, 44 So. 67, 1907 Miss. LEXIS 109 (Miss. 1907).

Where one claimed the land involved as sole owner, mortgaged it to another who thereafter foreclosed it, and he and his devisees were in possession adversely for more than ten years, suit of persons claiming under precedent outstanding titles was barred. Dunbar v. Aldrich, 79 Miss. 698, 31 So. 341, 1901 Miss. LEXIS 114 (Miss. 1901).

Adverse possession, though under a parol gift, if it continue for ten years, confers a perfect title. Davis v. Davis, 68 Miss. 478, 10 So. 70, 1891 Miss. LEXIS 52 (Miss. 1891).

6. —Tacking.

Period of adverse possession by remainderpersons could begin running against interests of third parties prior to date outstanding life estate on property was removed; life tenant's possession was hostile as to third parties and could be tacked on to remainderperson's interest. Ramsey v. Copiah Bank, N.A., 678 So. 2d 637, 1996 Miss. LEXIS 208 (Miss. 1996).

Where there was privity between appellees and their predecessor in title, appellees are entitled to tack their possession to that of their predecessor and to acquire title by adverse possession to small strip of land between an old fence line and the true boundary line although appellees were not themselves in possession for ten years. Ricketts v. Simmons, 44 So. 2d 537 (Miss. 1950).

It is competent to join one adverse possession to another in order to make the bar effectual, if the possession be continued, uninterrupted, and adverse during the whole period. Benson v. Stewart, 30 Miss. 49, 1855 Miss. LEXIS 61 (Miss. 1855).

7. Color of title.

In an action to establish ownership of, or a leasehold interest in oil, gas and other minerals in certain land, and for cancellation of defendant's tax deed, plaintiffs were not entitled to relief, even if the buyer at the tax sale had not obtained good title, where the record showed that with the tax sale and subsequent tax deed, all of record, the purchaser had color of title, that she had entered the land personally and by authorized representation, and had occupied the same in the manner described in this section for longer than the requisite ten years. Clement v. R. L. Burns Corp., 373 So. 2d 790, 1979 Miss. LEXIS 2295 (Miss. 1979).

Where minerals had been severed from the surface, and defendants, claiming under color of title of a void tax deed, although exercising acts of ownership of which the surface was susceptible, had never taken actual possession of any of the minerals, they did not acquire rights to the minerals by adverse possession, so that plaintiffs, who held mineral rights to the land through inheritance from the grantor of the surface rights, did not lose their rights to the minerals by limitations or laches. White v. Merchants & Planters Bank, 229 Miss. 35, 90 So. 2d 11, 1956 Miss. LEXIS 583 (Miss. 1956).

Widow's act in recording deed, valid on its face, to her from purchaser of her deceased husband's land at foreclosure sale, gave notice to world that she claimed to be owner of land and that act was act of ouster as against anyone else claiming the land, including her six children, whose ages ranged from 1 to 12 years, and warranty deed by her after she had been in uninterrupted possession under this recorded deed for more than 34 years conveyed good title. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

Generally, tax deed gives color of title although it is invalid or even where absolutely void, providing description of the property is legally sufficient. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

Statutes of limitation do not run in favor of the holder of the tax deed void on its face. Meyerkort v. Warrington, 19 So. 2d 433 (Miss. 1944).

Void tax deed is good color of title to support adverse possession. Hamner v. Yazoo Delta Lumber Co., 100 Miss. 349, 56 So. 466, 1911 Miss. LEXIS 48 (Miss. 1911).

A void deed is sufficient to constitute color of title. One who enters under color of title and holds adversely may extend his possession to the whole land embraced in his deed. But a mere intruder can extend his possession only to the extent of his actual occupancy. Ryan v. Mississippi V. & S. I. R. Co., 62 Miss. 162, 1884 Miss. LEXIS 40 (Miss. 1884); Welborn v. Anderson, 37 Miss. 155, 1859 Miss. LEXIS 11 (Miss. 1859).

8. Interests acquired; easements.

Grantee of alley easement is barred from obtaining relief against adverse possessor for more than 13 years. Cummins v. Dumas, 147 Miss. 215, 113 So. 332, 1927 Miss. LEXIS 348 (Miss. 1927).

Right, granted in letter, to build house on lot and occupy same so long as it is used for publishing newspaper, where acted upon was assignable, and assignee holding for 10 years acquired an easement. Frederic v. Mayers, 89 Miss. 127, 43 So. 677, 1906 Miss. LEXIS 101 (Miss. 1906).

9. Persons affected in general.

Denial of the mother's claim of right to the marital home was appropriate because the father's parents had the legal right to dispossess the father of his enjoyment of the home, and that right would continue for the statutory period of ten years under Miss. Code Ann. § 15-1-7; thus, the father's continued presence at the marital home was not one of right, but a continuing gift to the father by his parents. Jordan v. Jordan, 963 So. 2d 1235, 2007 Miss. App. LEXIS 522 (Miss. Ct. App. 2007).

A mineral deed to homestead which was not signed by the wife of the owner, being void, did not carry with it constructive possession, and therefore the ten-year statute of limitations was inapplicable to an action brought some 31 years after the conveyance to cancel the deed. Furthermore, since their possession of the homestead had not been disturbed or invaded, the husband and wife were not required to take any steps to cancel the deed prior to the institution of the present suit. Travis v. Dantzler, 244 Miss. 360, 141 So. 2d 556, 1962 Miss. LEXIS 455 (Miss. 1962).

Statute held to bar suit to remove, as alleged cloud on title, a deed executed upon a sale for purposes of partition some forty years before, on ground that all parties in interest were not served and that land was not shown therein to be incapable of partition in kind. Hollingsworth v. Central Oil Co., 236 Miss. 779, 112 So. 2d 518, 1959 Miss. LEXIS 376 (Miss. 1959).

Suit by heirs of an incompetent grantor to set aside a deed the recording of which in the grantor's lifetime was constructive notice to them, is barred by the running of the statutory period since his death. Aultman v. Kelly, 236 Miss. 1, 109 So. 2d 344, 1959 Miss. LEXIS 287 (Miss. 1959).

A son of intestate could not claim title to land by adverse possession against a widow who had not claimed any interest in the property because of mistaken idea of invalidity of her marriage and where the son kept the property under the idea that his stepmother had no interest. Bonds v. Bonds, 226 Miss. 348, 84 So. 2d 397, 1956 Miss. LEXIS 406 (Miss. 1956).

Ordinarily ignorance of his or her legal rights by a person against whom land is claimed by adverse possession is no defense against the running of the statutes of limitations. Bonds v. Bonds, 226 Miss. 348, 84 So. 2d 397, 1956 Miss. LEXIS 406 (Miss. 1956).

Possession of land by owner and mortgagor, or his grantees, during life of deed of trust, cannot form basis of claim to adverse possession by him, since mortgagor has right to retain possession of property until foreclosure sale under deed of trust. Duncan v. Mars, 44 So. 2d 529 (Miss. 1950).

Where land was sold under a decree in partition, the possession of the interests of two of the owners, who were not parties to the proceeding, remained in them by constructive operation of law as long as possession was not taken by someone in hostility to their interests, unless divested by or as a result of the partition proceedings, and limitation would not affect them even if they let the land lie unoccupied and idle for fifty years or more. Taylor v. Twiner, 193 Miss. 410, 9 So. 2d 644, 1942 Miss. LEXIS 117 (Miss. 1942).

10. —Remaindermen.

Chancellor properly denied a motion to dismiss filed by a mother and her daughter because the brother's action to set aside the sister's deed, remove the cloud on his title, and to quiet title to the disputed property was governed by the 10-year statutes of limitations where the daughter knew about the brother's deed, the brother was a remainderman who did not yet have the present right to possess the property, and the brother had a present cause of action. Lott v. Saulters, 133 So. 3d 794, 2014 Miss. LEXIS 53 (Miss. 2014).

Grantee of life tenant, holding over after life tenant's death, could not set up hostile claim against remaindermen based simply on possession. Thomasson v. Kinard, 153 Miss. 398, 121 So. 109, 1929 Miss. LEXIS 31 (Miss. 1929).

Grantee of widower's dower interest in land does not hold adversely to remainderman until widow's death. Anglin v. Broadnax, 97 Miss. 514, 52 So. 865, 1910 Miss. LEXIS 282 (Miss. 1910).

Tenant in remainder cannot bring suit for partition, nor will ejectment lie until his right of possession accrues. Shipp v. McKee, 80 Miss. 741, 31 So. 197, 1902 Miss. LEXIS 214 (Miss. 1902).

The statute does not run against an action of ejectment by a remainderman until the determination of the particular estate. Hoskins v. Ames, 78 Miss. 986, 29 So. 828, 1901 Miss. LEXIS 144 (Miss. 1901).

Although one is in possession of land, claiming adversely under a void tax deed, his purchase of a life estate therein will render such possession lawful thereafter as against remaindermen and estop the running of the statute as against them. Jones v. Merrill, 69 Miss. 747, 11 So. 23, 1892 Miss. LEXIS 2 (Miss. 1892).

11. —Persons under disability.

Statute of limitations in § 15-1-7 applies to action alleging that deed of trust and its foreclosure were invalid because mortgagor was mentally incompetent, where statute contained savings provision in favor of those under disability of infancy or unsoundness of mind; durational limitation of § 15-1-59 does not apply to § 15-1-7, where § 15-1-7 contains its own savings provision, and where other statutes containing savings provisions in favor of persons under disability provide for maximum duration for savings provisions. Talbert v. Henderson, 688 F. Supp. 250, 1987 U.S. Dist. LEXIS 13869 (S.D. Miss. 1987).

A complaint seeking to set aside a deed is not demurrable as stating a cause of action barred by limitations where it alleges that the deed was obtained by fraud and duress, and while complainant was unable to attend to her affairs, due to mental impairment. McMahon v. McMahon, 243 Miss. 89, 137 So. 2d 520, 1962 Miss. LEXIS 318 (Miss. 1962).

Children, whose ages ranged from 1 to 12 years at time of death of their father, who lived on land during lifetime of father and knew that after his death mother claimed it, who knew mother sold land, and who neither inquired nor discovered their interest in land until youngest child was 47 years of age, exercised such complete indifference to, and disregard of, their rights that they should not, in equity and good conscience, be permitted to prevail over purchaser in good faith, for sufficient consideration. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

Heir 15 years old when interest of dowress ceased on her death in 1893, not barred by 10-year statute from suing for partition in December 1907. Anglin v. Broadnax, 97 Miss. 514, 52 So. 865, 1910 Miss. LEXIS 282 (Miss. 1910).

Infant old enough to deceive person of ordinary prudence and receiving benefit of contract with a party whom he deceived as to his age is estopped to disaffirm the contract where he was guilty of wilful fraud and misrepresentation. Lake v. Perry, 95 Miss. 550, 49 So. 569, 1909 Miss. LEXIS 280 (Miss. 1909).

A grantor may disaffirm a deed executed during infancy and bring suit to recover it at any time within ten years after becoming an adult. Shipp v. McKee, 80 Miss. 741, 31 So. 197, 1902 Miss. LEXIS 214 (Miss. 1902).

12. Mortgages and deeds of trust.

Statute (Laws 1934, ch 250) providing that all mortgagors of real estate located within the state who might have the right to set aside any title to such real estate by reason of the neglect of any trustee to insert in a notice of sale of such real estate, the name of said mortgagor, should commence suit 12 months from the passage of such act, and upon the failure of such mortgagor or other person to commence suit within such time, the right to bring such suit, and the remedy to enforce such right of action should be deemed thereafter to be completely extinguished, if applied so as to restrict the application of the general ten year statute, made applicable by statute (Code 1942, § 888) regulating the sale of lands under mortgages and deeds of trust, was not invalid as being an impairment of contract or as class or private legislation, since the right to sue is distinct from the right sought to be enforced and is remedial in character. Barbour v. Williams, 196 Miss. 409, 17 So. 2d 604, 1944 Miss. LEXIS 207 (Miss. 1944).

Only 10-year statute applies in case of deed of trust on homestead void because wife did not join. Woods v. Campbell, 87 Miss. 782, 40 So. 874, 1905 Miss. LEXIS 219 (Miss. 1905).

13. When limitation period runs, generally.

Limitations do not run against a widow's right to claim homestead as against the owner of mineral rights conveyed by her husband's deed, while she remains in undisturbed possession of the land. Biglane v. Rawls, 247 Miss. 226, 153 So. 2d 665, 1963 Miss. LEXIS 295 (Miss. 1963).

This section [Code 1942, § 709] and Code 1942, § 710 do not begin against a person who has good title and actual or constructive possession of lands, until an adverse entry. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

The limitation period begins to run against a right of action to set aside a mineral deed procured by representing it to be only a lease, from the time when it was put on record. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

Filing for record a deed sought to be set aside as fraudulent set the statute of limitations running. Ayers v. Davidson, 285 F.2d 137, 1960 U.S. App. LEXIS 2890 (5th Cir. Miss. 1960).

The statute begins to run against a cause of action for failure to deliver a deed on a certain date, on the day following. Rankin v. Mark, 238 Miss. 858, 120 So. 2d 435, 1960 Miss. LEXIS 473 (Miss. 1960).

An action in the nature of a suit to remove as clouds from title a claim to one-half oil, gas and mineral interest in land was barred where more than 10 years had been permitted to run before the institution of the action. Gandy v. Burke, 236 Miss. 241, 109 So. 2d 926, 1959 Miss. LEXIS 313 (Miss. 1959).

Generally, statutes of limitation begin to run as soon as there is a cause of action. Aultman v. Kelly, 236 Miss. 1, 109 So. 2d 344, 1959 Miss. LEXIS 287 (Miss. 1959).

The statutes of limitation do not begin to run against persons in actual or constructive possession of lands until an adverse entry has been made. Trigg v. Trigg, 233 Miss. 84, 101 So. 2d 507, 1958 Miss. LEXIS 360 (Miss. 1958).

Suit for reconveyance of land based upon purchaser's agreement to reconvey when purchaser abandoned plant expected to be erected on land must be brought within ten years from date of abandonment of plant so erected, and is barred by limitations when brought after ten-year period. Krohn v. L. N. Dantzler Lumber Co., 208 Miss. 691, 208 Miss. 91, 45 So. 2d 276, 1950 Miss. LEXIS 287 (Miss. 1950).

Right of action against grantee in deed to set aside deed and hold grantee as trustee of land for benefit of complainants accrues at the time the grantee obtains deed to land. Burton v. Gibbes, 204 Miss. 248, 37 So. 2d 285, 1948 Miss. LEXIS 359 (Miss. 1948).

Where the title to land is made to vest in a donee upon the happening of a future event, the statute will not run until the event happens. Millsaps v. Shotwell, 76 Miss. 923, 25 So. 359, 1899 Miss. LEXIS 2 (Miss. 1899).

The statute does not run against the right to enforce a legacy charged upon the estate of the testator as to land held by a transfer from the heir or devisee pending administration and before settlement. Peebles v. Acker, 70 Miss. 356, 12 So. 248, 1892 Miss. LEXIS 110 (Miss. 1892).

Where the right of action was descended from one dying under disability to another resting under disability, ten years only is given from the death of the first person within which the second may sue. Watts v. Gunn, 53 Miss. 502, 1876 Miss. LEXIS 103 (Miss. 1876).

The statute commences to run from the time plaintiff's cause of action accrued, and not from the date the title vests in him. Shaw v. Alexander, 32 Miss. 229, 1856 Miss. LEXIS 182 (Miss. 1856).

14. —Particular cases.

Statute of limitation did not prohibit the chancery court from ruling on relatives' action to recover land on the ground that it was fraudulently or mistakenly conveyed to a decedent because their cause of action did not accrue until they became aware of the adverse claim to the land, and the decedent took no action to possess and control any tract of land west of a creek; therefore, the cause of action did not accrue until the decedent's estate sought to enforce the warranty deed. Estate of Pounds v. Shirley, 235 So. 3d 1418, 2017 Miss. App. LEXIS 598 (Miss. Ct. App. 2017).

Where a law student developed a relationship with the deceased, had her adopt him, and then helped her compose a holographic will devising all of her property to him, the statute of limitation did not begin to run against a deed objector until the deceased died. Cupit v. Pluskat (In re Estate of Reid), 825 So. 2d 1, 2002 Miss. LEXIS 182 (Miss. 2002).

In an action to cancel as a cloud on title a sale of property to the state in 1948 for 1947 taxes on minerals, the chancellor properly overruled the state's demurrer where the demurrer admitted the complainant's allegation that the 1948 tax sale had been invalid for failure to comply with the predecessor statute of § 27-41-59 requiring that the tax collector first offer the property in 40-acre tracts. In addition, where the demurrer admitted the allegation that the state had not been in possession of the property since the tax sale, the chancellor properly overruled the special demurrer that the action was barred by the limitations in §§ 15-1-7, 15-1-9, and 15-1-17 since possession is required to start any of the three statutes into operation. Pittman v. Currie, 391 So. 2d 654, 1980 Miss. LEXIS 2182 (Miss. 1980).

In an action to establish title to land that had in 1907 been granted to a railroad with a possibility of reverter if the grantee ever abandoned the depot to be built on the land, the trial court erred in concluding that abandonment had occurred, if at all, not later than 1965, and that the action was thus barred by this section; since the grantee and its successor had been in continuous substantial compliance with the 1907 deed, plaintiffs had no reason to enter the land and this section was never set in motion or waived. Hathorn v. Illinois C. G. R. Co., 374 So. 2d 813, 1979 Miss. LEXIS 2396 (Miss. 1979).

In an action by landowners to cancel certain mineral interest conveyances, the 10-year statutes of limitation on actions at law and in equity to recover lands did not run from the date of the alleged conveyance of the mineral rights where the plaintiffs were in open and full possession of the land at the time of the purported conveyance and where the claimants to the mineral rights never took actual possession of the minerals at issue. Bowen v. Bianchi, 359 So. 2d 758, 1978 Miss. LEXIS 2268 (Miss. 1978).

Where a mineral interest is included in a deed by mutual mistake and the grantee does not claim such interest or intend to own or possess it, the grantee does not have constructive possession, and the statute of limitations in a suit for reformation will not begin to run against the grantor until he has notice of some adverse claim thereto or his possession is disturbed in some manner. Searcy v. Tomlinson Interests, Inc., 358 So. 2d 373, 1978 Miss. LEXIS 2526 (Miss. 1978).

Landowner's suit to cancel defendant's mineral deed on grounds of fraud was barred by the 10 year statute of limitations where, after landowner received actual notice of deed, he waited for more than 10 years to file suit. Hood v. Marshall, 326 So. 2d 320, 1976 Miss. LEXIS 1735 (Miss. 1976).

Where a deed conveyed a depot site to a railroad company and contained a covenant running with the land that a public roadway should be kept open to the depot grounds for public convenience at and around the station, and the railroad failed for a period of more than 40 years to maintain a station on the conveyed property, the covenant was barred by the statute of limitations. White v. Mississippi Power & Light Co., 196 So. 2d 343, 1967 Miss. LEXIS 1483 (Miss. 1967).

Where the father remained in possession of land, which he had conveyed by warranty deed to a son in 1937 allegedly as security for an indebtedness, and exercised complete dominion over the land until his death, and thereafter the father's heirs retained possession of the land and dealt with it as part of the father's estate until 1951, an action by the heirs in 1956 against the son to establish a resulting trust for the benefit of the heirs was not barred by the statutory limitations imposed by this section [Code 1942, § 709] and §§ 718 and 719 Code of 1942. Trigg v. Trigg, 233 Miss. 84, 101 So. 2d 507, 1958 Miss. LEXIS 360 (Miss. 1958).

Where the landowner had actual knowledge for ten years prior to the commencement of a suit, or by the use of reasonable prudence would have known, that the instrument she executed was a mineral deed rather than a royalty deed, and she could have brought action at any time within the ten-year period and obtained process upon the nonresident defendant, by publication, the landowner's action was barred by this section [Code 1942, § 709]. King v. Childress, 232 Miss. 766, 100 So. 2d 578, 1958 Miss. LEXIS 327 (Miss. 1958).

Statute of limitations begins to run against vendee's action to recover purchase money paid under insufficient oral contract for sale of land from date vendor declines to execute agreement, or takes affirmative action equivalent to repudiation of parol contract. Krohn v. L. N. Dantzler Lumber Co., 208 Miss. 691, 208 Miss. 91, 45 So. 2d 276, 1950 Miss. LEXIS 287 (Miss. 1950).

Tax title purchaser claiming ten years' adverse possession between April 7, 1930, and June 12, 1945, who leased land for oil and gas in 1940, whose claim to land was open and notorious in community, who rented land to various tenants from 1935 to 1948, with exception of period from 1938 to 1943, there being breaks in occupancy of land between tenants who cultivated small patches of open land, and who did not improve land, fence it, or cut timber, failed to show continuous use of land for statutory period required. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

The right to bring suit to establish a resulting trust arising out of the conveyance of land to a third party pursuant to an oral agreement whereby one person was to advance all funds necessary to purchase the land and another was to repay to him half of the amount, each to acquire an undivided one-half interest, with an understanding that the deed would be executed to such third party to be held by her until the loan was repaid, did not accrue until such half of the funds advanced had been repaid. Shepherd v. Johnston, 201 Miss. 99, 28 So. 2d 661, 1947 Miss. LEXIS 374 (Miss. 1947); Traweek v. Kelly, 60 Miss. 652, 1882 Miss. LEXIS 108 (Miss. 1882); Dixon v. Cook, 47 Miss. 220, 1872 Miss. LEXIS 65 (Miss. 1872); Wiggle v. Owen, 45 Miss. 691, 1871 Miss. LEXIS 118 (Miss. 1871).

Ten-year statute against suits to recover land ran against state from November 1, 1857, to January 24, 1877 (see Code 1857, ch. 57 arts. 1, 2, 3, 4 and Code 1871 §§ 2147, 2148, 2149, 2150, and Laws 1877 ch. 49), except when suspended during Civil War between December 31, 1862, and April 2, 1867. Southern Pine Co. v. Pigott, 93 Miss. 281, 47 So. 381, 1908 Miss. LEXIS 127 (Miss. 1908).

15. Pleading.

Where a law student developed a relationship with the deceased, had her adopt him, and then helped her compose a holographic will devising all of her property to him, the statute of limitation did not begin to run against a deed objector until the deceased died. Cupit v. Pluskat (In re Estate of Reid), 825 So. 2d 1, 2002 Miss. LEXIS 182 (Miss. 2002).

In an action regarding a mineral interest deed claimants who had made an adverse entry onto the property could not utilize the statutes of limitations, Code §§ 15-1-7, 15-1-9, against others who had taken constructive possession of the property. Mills v. Damson Oil Corp., 686 F.2d 1096, 1982 U.S. App. LEXIS 25678 (5th Cir. Miss. 1982).

A party who pled the ten-year statute of limitations in § 15-1-7 could not thereafter on appeal claim that she had sufficiently raised the general limitation statute of six years set forth in § 15-1-49. Estate of Miller v. Miller, 409 So. 2d 715, 1982 Miss. LEXIS 1862 (Miss. 1982).

A complaint seeking to set aside a deed is not demurrable as stating a cause of action barred by limitations where it alleges that the deed was obtained by fraud and duress, and while complainant was unable to attend to her affairs. McMahon v. McMahon, 243 Miss. 89, 137 So. 2d 520, 1962 Miss. LEXIS 318 (Miss. 1962).

Where the complaint in a proceeding to vacate a partition sale and decree thereunder was wholly silent upon the matter of possession, and it was reasonable to infer that the purchasers never went into possession, the defendants, in order to sustain their special demurrers raising the affirmative defense of the ten-year and two-year statutes of limitations, were not entitled to an inference that the purchaser had gone into possession. Taylor v. Twiner, 193 Miss. 410, 9 So. 2d 644, 1942 Miss. LEXIS 117 (Miss. 1942).

Statute of limitations must be specifically pleaded. Yazoo & M. V. R. Co. v. Kirk, 102 Miss. 41, 58 So. 710, 1912 Miss. LEXIS 28 (Miss.), modified, 102 Miss. 56, 58 So. 834 (Miss. 1912), limited, Norwich Union Fire Ins. Co. v. Standard Drug Co., 121 Miss. 510, 83 So. 676, 1920 Miss. LEXIS 97 (Miss. 1920).

Amended declaration not barred by limitation where original filed in time. Yazoo & M. V. R. Co. v. Rivers, 93 Miss. 557, 46 So. 705, 1908 Miss. LEXIS 103 (Miss. 1908).

New parties made defendants in equity by amended bill charging that they claim an interest in the land, cannot plead a statute of limitations not fully run when the suit was begun, if they acquired their interest pending the suit from original defendant. State v. Woodruff, 81 Miss. 456, 33 So. 78, 1902 Miss. LEXIS 155 (Miss. 1902).

Unless the declaration shows the character of defendant's possession and the length of time he has so occupied the premises, the bar of the statute cannot be raised by demurrer. Tush-Ho-Yo-Tubby v. Barr, 41 Miss. 52, 1866 Miss. LEXIS 5 (Miss. 1866).

RESEARCH REFERENCES

ALR.

When statute of limitation commences to run against damage from overflow of land caused by artificial construction or obstruction. 5 A.L.R.2d 302.

Adverse possession: mortgagee's possession before foreclosure as barring right of redemption. 7 A.L.R.2d 1131.

Change in party after statute of limitations has run. 8 A.L.R.2d 6.

Title by adverse possession as affected by recording statutes. 9 A.L.R.2d 850.

Inclusion or exclusion of first and last day for purposes of statute of limitations. 20 A.L.R.2d 1249.

Entry or indorsement by creditor on note, bond, or other obligation as evidence of part payment which will toll the statute of limitations. 23 A.L.R.2d 1331.

Statute of limitations applicable to action for encroachment. 24 A.L.R.2d 903.

Estoppel to rely on statute of limitations. 24 A.L.R.2d 1413.

Authority of agent to make payment on

behalf of principal, as regards statute of limitations. 31 A.L.R.2d 139.

What statute of limitation applies to an action, based on duress, to recover money or property. 77 A.L.R.2d 821.

Validity, and applicability to causes of action not already barred, of a statute enlarging limitation period. 79 A.L.R.2d 1080.

Appointment of guardian for incompetent or for infant as affecting running of statute of limitations against ward. 86 A.L.R.2d 965.

Statute permitting new action after failure of original action commenced within period of limitation, as applicable in cases where original action failed for lack of jurisdiction. 6 A.L.R.3d 1043.

Validity of contractual time period, shorter than statute of limitations, for bringing action. 6 A.L.R.3d 1197.

What statute of limitations governs action for malicious use of process or abuse of process, in the absence of an express provision for such tort. 10 A.L.R.3d 533.

When does cause of action accrue, for purposes of statute of limitations, against action based upon encroachment of building or other structure upon land of another. 12 A.L.R.3d 1265.

Period of limitations or laches to be applied under 29 USCS §§ 185, 187, in action for breach of labor contract or damages from unfair labor practice. 19 A.L.R.3d 1034.

Settlement negotiations as estopping reliance on statute of limitations. 39 A.L.R.3d 127.

Agreement of parties as estopping reliance on statute of limitations. 43 A.L.R.3d 756.

Plaintiff's diligence as affecting his right to have defendant estopped from pleading the statute of limitations. 44 A.L.R.3d 760.

Owner's surveying of land as entry thereon tolling running of statute of limitations for purposes of adverse possessing. 76 A.L.R.3d 1202.

State statute of limitations applicable to inverse condemnation or similar proceedings by landowner to obtain compensation for direct appropriation of land without the institution or conclusion of formal proceedings against specific owner. 26 A.L.R.4th 68.

When statute of limitations begins to run upon action against attorney for malpractice. 32 A.L.R.4th 260.

What gives rise to right of rescission under state blue sky laws. 52 A.L.R.5th 491.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions §§ 111, 195.

17 Am. Jur. Pl & Pr Forms (Rev), Limitation of Actions, Form 61 (allegation of complaint, petition, or declaration that infancy tolled statute); Form 62 (affidavit showing suspension of limitations by infancy); Form 71 (allegation of complaint, petition, or declaration that mental incapacity of person executing deed has tolled statute); Form 169 (instructions to jury as to mental incapacity as tolling statute).

13 Am. Jur. Pl & Pr Forms, Forms 13:434, 13:445-13:447 (proceedings to avoid statute).

4 Am. Jur. Trials, Statutes of Limitation § 24.

CJS.

54 C.J.S., Limitations of Actions §§ 57 et seq., 131 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 111, March 1979.

§ 15-1-9. Limitations applicable to suits in equity to recover land.

A person claiming land in equity may not bring suit to recover the same except within the period during which, by virtue of Section 15-1-7, he might have made an entry or brought an action to recover the same, if he had been entitled at law to such an estate, interest, or right in or to the same as he shall claim therein in equity. However, in every case of a concealed fraud, the right of any person to bring suit in equity for the recovery of land, of which he or any person through whom he claims may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which the fraud shall, or, with reasonable diligence might, have been first known or discovered.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (2); 1857, ch. 57, art. 2; 1871, § 2148; 1880, § 2665; 1892, § 2731; 1906, § 3091; Hemingway's 1917, § 2455; 1930, § 2286; 1942, § 710.

Cross References — Venue of actions, see §§ 11-5-1 et seq.

Suits in chancery courts in regard to land titles, see §§ 11-17-1 through 11-17-37.

Effect of concurrent jurisdiction between chancery courts and courts of common law, see § 15-1-77.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Adverse possession.
3. Persons affected.
4. Laches.
5. Equitable relief.
6. Running of limitations period, generally.
7. —Mineral rights involved.
8. —Particular cases.
9. —Concealed fraud.
10. Pleading.

1. In general.

In an action to quiet title based on a 1934 deed to a one-fourth mineral interest, the statute of limitations was properly invoked in defense to a cross bill seeking to cancel the claim for failure of consideration, for the deed was at most voidable and action to set aside such a deed must be brought within 10 years. Covington v. Butler, 242 So. 2d 444, 1970 Miss. LEXIS 1381 (Miss. 1970).

Code 1942, § 709 and this section [Code 1942, § 710] are to be considered together. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

The statutes of limitation do not begin to run against one in actual or constructive possession of lands until an adverse entry has been made. Leech v. Masonite Corp., 219 Miss. 176, 68 So. 2d 297, 1953 Miss. LEXIS 379 (Miss. 1953).

Purpose and intent of Code 1942, §§ 709 and 711, and this section [Code 1942, § 710], is to guarantee good title to one purchasing land in good faith from another, where such other went into possession under recorded deed, valid on its face, and continued in uninterrupted possession for period of 31 years or more. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

The statute [Code 1930, § 2286] applies to a suit in equity to recover land in possession of the defendant, and not to a suit in equity by a complainant in the possession and enjoyment of the land for the purpose of perfecting his title thereto. Newman v. J. J. White Lumber Co., 162 Miss. 581, 139 So. 838, 1932 Miss. LEXIS 148 (Miss. 1932).

Statutory limitation on equity suit to recover land held not to apply to suit to reform deed by person whose possession and payment of taxes through predecessors in title exceeds forty-five years. Newman v. J. J. White Lumber Co., 162 Miss. 581, 139 So. 838, 1932 Miss. LEXIS 148 (Miss. 1932).

2. Adverse possession.

Residents of Italy, cotenants of real property located in Mississippi, were not given actual notice or the equivalent thereof of claims adverse to theirs by the filing of pleadings and deeds in the chancery clerk's office. Guiseppe v. Cozzani, 193 So. 2d 549, 1966 Miss. LEXIS 1287 (Miss. 1966).

Evidence showing that complainants entered into possession of parcel of land in 1942, under color of title by virtue of deed executed to them by a bank, and that complainants remained in possession of the land, claiming it as their own, and exercised acts of ownership on the land by cutting timber and pasturing cattle on the land, keeping the fences in state of repair, and paying taxes on the land for a period of 19 years, established complainants' title by adverse possession. Bickham v. Bates, 246 Miss. 171, 150 So. 2d 138, 1963 Miss. LEXIS 433 (Miss. 1963).

The grantees in a deed and their successors in title who had been in actual adverse possession of the entire interest in tract of land for more than ten years acquired title by adverse possession. Farmer v. Runnels, 244 Miss. 525, 142 So. 2d 198, 1962 Miss. LEXIS 472 (Miss. 1962).

Code 1942, § 709 and this section [Code 1942, § 710] are limitation statutes which may be used defensively only, as distinguished from Code 1942, § 711, which provides that 10 years' adverse possession vests full title, and which accordingly may be used affirmatively and defensively. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

This provision does not apply except where the person invoking it has been in adverse possession of land against the true owner. Continental Oil Co. v. Walker, 238 Miss. 21, 117 So. 2d 333, 1960 Miss. LEXIS 371 (Miss. 1960).

Widow's act in recording deed, valid on its face, to her from purchaser of her deceased husband's land at foreclosure sale, gave notice to world that she claimed to be owner of land and that act was act of ouster as against anyone else claiming the land, including her six children, whose ages ranged from 1 to 12 years, and warranty deed by her after she had been in uninterrupted possession under this recorded deed for more than 34 years conveyed good title. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

Grantee of life tenant could not maintain suit to quiet title to the land involved based on deed from life tenant and adverse possession, since his holding over after death of the life tenant made him a tenant at sufferance of the remaindermen, and was consistent with their title as such; and he could not, as against them, invoke the ten-year statute of limitations so as to defeat their right to possession of, and title to, the land. Thomasson v. Kinard, 153 Miss. 398, 121 So. 109, 1929 Miss. LEXIS 31 (Miss. 1929).

Adverse possession for 10 years will defeat suit to set aside occupant's deed, on record for that time, on the ground it was executed to defeat creditors. Gordon v. Anderson, 90 Miss. 677, 44 So. 67, 1907 Miss. LEXIS 109 (Miss. 1907).

Where a bill to avoid a foreclosure sale was brought more than ten years after the sale, and after the purchaser had taken notorious and adverse possession, and there was no allegation that complainants were ignorant of any of the proceedings leading up to the sale or of the claim of the purchaser, nor that the alleged fraud in the sale had been concealed or was unknown to them, the cause of action was barred by limitation. Alabama & V. R. Co. v. Thomas, 86 Miss. 27, 38 So. 770, 1905 Miss. LEXIS 81 (Miss. 1905).

3. Persons affected.

Chancellor properly denied a motion to dismiss filed by a mother and her daughter because the brother's action to set aside the sister's deed, remove the cloud on his title, and to quiet title to the disputed property was governed by the 10-year statutes of limitations where the daughter knew about the brother's deed, the brother was a remainderman who did not yet have the present right to possess the property, and the brother had a present cause of action. Lott v. Saulters, 133 So. 3d 794, 2014 Miss. LEXIS 53 (Miss. 2014).

Suit to cancel quitclaim deed given without consideration, twelve years after death of grantee and after title to mineral rights had passed to innocent purchasers, held barred. Williams v. Phoenix Minerals Corp., 247 Miss. 697, 158 So. 2d 51, 1963 Miss. LEXIS 347 (Miss. 1963).

A mineral deed to homestead which was not signed by the wife of the owner, being void, did not carry with it constructive possession, and therefore the ten years statute of limitations was inapplicable to an action by the husband and wife to cancel the deed brought some 21 years after the conveyance. Travis v. Dantzler, 244 Miss. 360, 141 So. 2d 556, 1962 Miss. LEXIS 455 (Miss. 1962).

Children, whose ages ranged from 1 to 12 years at time of death of their father, who lived on land during lifetime of father and knew that after his death mother claimed it, who knew mother sold land, and who neither inquired nor discovered their interest in land until youngest child was 47 years of age, exercised such complete indifference to, and disregard of, their rights that they should not, in equity and good conscience, be permitted to prevail over purchaser in good faith, for sufficient consideration. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

Where land was sold under a decree in partition, the possession of the interests of two of the owners, who were not parties to the proceeding, remained in them by constructive operation of law as long as possession was not taken by someone in hostility to their interests, unless divested by or as a result of the partition proceedings, and limitation would not affect them even if they let the land lie unoccupied and idle for fifty years or more. Taylor v. Twiner, 193 Miss. 410, 9 So. 2d 644, 1942 Miss. LEXIS 117 (Miss. 1942).

The statute [Code 1930, § 2286] does not apply to a suit brought by a person in possession of land, and, therefore, person in possession need not bring suit to perfect his title thereto until his title is menaced by the adverse claim of another. Newman v. J. J. White Lumber Co., 162 Miss. 581, 139 So. 838, 1932 Miss. LEXIS 148 (Miss. 1932).

Grantee of life tenant could not maintain suit to quiet title to the land involved based on deed from life tenant and adverse possession, since his holding over after death of the life tenant made him a tenant at sufferance of the remaindermen, and was consistent with their title as such; and he could not as against them invoke the ten-year statute of limitations so as to defeat their right to possession of, and title to, the land. Thomasson v. Kinard, 153 Miss. 398, 121 So. 109, 1929 Miss. LEXIS 31 (Miss. 1929).

4. Laches.

A mineral deed to homestead which was not signed by the wife of the owner, being void, did not carry with it constructive possession, and therefore the ten-year statute of limitations was inapplicable to an action brought some 31 years after the conveyance to cancel the deed. Furthermore, since their possession of the homestead had not been disturbed or invaded, the husband and wife were not required to take any steps to cancel the deed prior to the institution of the present suit. Travis v. Dantzler, 244 Miss. 360, 141 So. 2d 556, 1962 Miss. LEXIS 455 (Miss. 1962).

Where there was a suit to cancel and remove some alleged clouds from the title of property which was sold under a bond mortgage to satisfy an indebtedness owing to a Louisiana corporation, in liquidation, the fact that the suit was filed just two days before the completion of the bar of ten-year statute of limitations, should not bar the action because of laches. Enochs v. Mississippi Tower Bldg., Inc., 210 Miss. 676, 50 So. 2d 551, 1951 Miss. LEXIS 307 (Miss. 1951).

Where the description of land sold at a tax sale did not cover all of the land on which the taxes had been levied, a purchaser from the state, who occupied the entire tract, had no valid claim, as against the original owners, to that portion of the land not included in such description, and title thereto would not be lost to the original owner through any doctrine of laches short of the ten-year statute of limitations. Johnson v. Carter, 193 Miss. 781, 11 So. 2d 196, 1943 Miss. LEXIS 8 (Miss. 1943).

No claim under this statute [Code 1892, § 2731] is barred until the limitation has attached, and laches is no defense if proceedings are instituted within the time. Hill v. Nash, 73 Miss. 849, 19 So. 707, 1896 Miss. LEXIS 202 (Miss. 1896).

5. Equitable relief.

Bank's claim for equitable subrogation was barred by the statute of limitations based on the date of payment of the balance of a line of credit, since the bank's lien did not create a possessory interest in the liened property to support an action to recover land subject to a longer limitations period. U.S. Bank N.A. v. State Bank & Trust Co., 45 F. Supp. 3d 582, 2014 U.S. Dist. LEXIS 95934 (S.D. Miss. 2014).

One entering under a contract of conveyance cannot maintain a bill to cancel the claim of his vendor, or his heirs, although they are barred by lapse of time from recovering either the land or the purchase price, unless he offers to pay the balance of the purchase money and interest. Nolan v. Snodgrass, 70 Miss. 794, 12 So. 583, 1893 Miss. LEXIS 9 (Miss. 1893).

6. Running of limitations period, generally.

Chancery court erred in dismissing an administrator's complaint against the decedent's sister and her transferees as untimely because the chancellor applied the wrong statute of limitations and the administrator, as both administrator and individually as a possible heir of the decedent, sought possession of the real property deeded away by the decedent, allegedly due to undue influence, which in a similar situation, the state supreme court held that the 10-year statute of limitations for actions to recover land applied. Bryant v. Dent, 270 So. 3d 976, 2018 Miss. App. LEXIS 453 (Miss. Ct. App. 2018).

Ten years' possession by purchaser on foreclosure of trust deed and successors held, notwithstanding deed on foreclosure was not given, to give title as against grantor of trust deed. American Petrofina, Inc. v. Warren, 247 Miss. 552, 156 So. 2d 729, 1963 Miss. LEXIS 324 (Miss. 1963).

Code 1942, § 709 and this section [Code 1942, § 710] do not begin against a person who has good title and actual or constructive possession of lands, until an adverse entry. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

Filing for record a deed sought to be set aside as fraudulent set the statute of limitations to run. Ayers v. Davidson, 285 F.2d 137, 1960 U.S. App. LEXIS 2890 (5th Cir. Miss. 1960).

An action is barred, concealed frauds excepted, in ten years after the right of action accrued, whether defendant has or has not been in the adverse possession of the land. Jones v. Rogers, 85 Miss. 802, 38 So. 742, 1904 Miss. LEXIS 106 (Miss. 1904), overruled, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), writ of error dismissed, 214 U.S. 196, 29 S. Ct. 635, 53 L. Ed. 965, 1909 U.S. LEXIS 1908 (U.S. 1909).

7. —Mineral rights involved.

In an action to cancel as a cloud on title a sale of property to the state in 1948 for 1947 taxes on minerals, the chancellor properly overruled the state's demurrer where the demurrer admitted the complainant's allegation that the 1948 tax sale had been invalid for failure to comply with the predecessor statute of § 27-41-59 requiring that the tax collector first offer the property in 40-acre tracts. In addition, where the demurrer admitted the allegation that the state had not been in possession of the property since the tax sale, the chancellor properly overruled the special demurrer that the action was barred by the limitations in §§ 15-1-7, 15-1-9, and 15-1-17 since possession is required to start any of the three statutes into operation. Pittman v. Currie, 391 So. 2d 654, 1980 Miss. LEXIS 2182 (Miss. 1980).

In an action by a widow to recover 50 percent of various mineral rights purchased by her deceased husband in a joint venture with defendant's deceased husband in which the theory of recovery was an implied trust or right to a partnership accounting, the chancery court erroneously granted judgment for plaintiff, where the cause of action was barred by the applicable ten year statutes of limitation at least as early as 1962, which was 10 years after the death of defendant's husband. Stebbins v. Hayes, 379 So. 2d 898, 1980 Miss. LEXIS 1836 (Miss. 1980).

In an action by landowners to cancel certain mineral interest conveyances, the 10-year statutes of limitation on actions at law and in equity to recover lands did not run from the date of the alleged conveyance of the mineral rights where the plaintiffs were in open and full possession of the land at the time of the purported conveyance and where the claimants to the mineral rights never took actual possession of the minerals at issue. Bowen v. Bianchi, 359 So. 2d 758, 1978 Miss. LEXIS 2268 (Miss. 1978).

Where a mineral interest is included in a deed by mutual mistake and the grantee does not claim such interest or intend to own or possess it, the grantee does not have constructive possession, and the statute of limitations in a suit for reformation will not begin to run against the grantor until he has notice of some adverse claim thereto or his possession is disturbed in some manner. Searcy v. Tomlinson Interests, Inc., 358 So. 2d 373, 1978 Miss. LEXIS 2526 (Miss. 1978).

Landowner's suit to cancel defendant's mineral deed on grounds of fraud was barred by the 10 year statute of limitations where, after landowner received actual notice of deed, he waited for more than 10 years to file suit. Hood v. Marshall, 326 So. 2d 320, 1976 Miss. LEXIS 1735 (Miss. 1976).

Limitations do not run against a widow's right to claim homestead as against the owner of mineral rights conveyed by her husband's deed, while she remains in undisturbed possession of the land. Biglane v. Rawls, 247 Miss. 226, 153 So. 2d 665, 1963 Miss. LEXIS 295 (Miss. 1963).

The limitation period begins to run against a right of action to set aside a mineral deed procured by representing it to be only a lease, from the time when it was put on record. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

An action in the nature of a suit to remove as clouds from title a claim to one-half oil, gas and mineral interest in land was barred where more than 10 years had been permitted to run before the institution of the action. Gandy v. Burke, 236 Miss. 241, 109 So. 2d 926, 1959 Miss. LEXIS 313 (Miss. 1959).

8. —Particular cases.

Statute of limitation defense did not apply to action by wife to set aside a conveyance of property by her husband to his father since the limitation period never began to run, as the conveyance was void because of Miss. Code Ann. § 89-1-29 and the conveyance was made without the wife's knowledge or consent. Snoddy v. Snoddy, 791 So. 2d 333, 2001 Miss. App. LEXIS 310 (Miss. Ct. App. 2001).

Where a deed conveyed a depot site to a railroad company and contained a covenant running with the land that a public roadway should be kept open to the depot grounds for public convenience at and around the station, and the railroad failed for a period of more than 40 years to maintain a station on the conveyed property, the covenant was barred by the statute of limitations. White v. Mississippi Power & Light Co., 196 So. 2d 343, 1967 Miss. LEXIS 1483 (Miss. 1967).

Statute held to bar suit to remove as alleged cloud on title, a deed executed upon a sale for purposes of partition some forty years before, on ground that all parties in interest were not served and that land was not shown therein to be incapable of partition in kind. Hollingsworth v. Central Oil Co., 236 Miss. 779, 112 So. 2d 518, 1959 Miss. LEXIS 376 (Miss. 1959).

Suit by heirs of an incompetent grantor to set aside a deed the recording of which in the grantor's lifetime was constructive notice to them, is barred by the running of the statutory period since his death. Aultman v. Kelly, 236 Miss. 1, 109 So. 2d 344, 1959 Miss. LEXIS 287 (Miss. 1959).

Action to establish a trust in land against defendant who had taken title thereto in his own name in violation of an oral agreement to take title in the names of both complainant's decedent and defendant was not barred by the ten-year statute of limitations, where under the Soldiers' and Sailors' Civil Relief Act the statute was suspended during decedent's military service. Chichester v. Chichester, 209 Miss. 628, 48 So. 2d 123, 1950 Miss. LEXIS 423 (Miss. 1950).

Suit for reconveyance of land based upon purchaser's agreement to reconvey when purchaser abandoned plant expected to be erected on land must be brought within ten years from date of abandonment of plant so erected, and is barred by limitations when brought after ten-year period. Krohn v. L. N. Dantzler Lumber Co., 208 Miss. 691, 208 Miss. 91, 45 So. 2d 276, 1950 Miss. LEXIS 287 (Miss. 1950).

9. —Concealed fraud.

Statute of limitation did not prohibit the chancery court from ruling on relatives' action to recover land on the ground that it was fraudulently or mistakenly conveyed to a decedent because their cause of action did not accrue until they became aware of the adverse claim to the land, and the decedent took no action to possess and control any tract of land west of a creek; therefore, the cause of action did not accrue until the decedent's estate sought to enforce the warranty deed. Estate of Pounds v. Shirley, 235 So. 3d 1418, 2017 Miss. App. LEXIS 598 (Miss. Ct. App. 2017).

Chancery court properly dismissed as untimely a brother's action against his sister to set aside certain deeds and instruments because, while the chancery court erred in inferring that the three-year general statute of limitations was applicable, the error was harmless and the 10-year statute of limitations for claims regarding land recovery in equity applied where the most recently dated deed associated with the transfer was filed and became a public record almost 15 years before brother's complaint was filed, and even assuming there was concealed fraud in the property's conveyance, the probate of the life tenant's estate in 2002 provided a glaring opportunity for the sister's alleged fraud to come to the brother's attention. Conley v. Wright, 193 So. 3d 663, 2016 Miss. App. LEXIS 340 (Miss. Ct. App. 2016).

Concealed fraud precluded the running of limitations for claiming land in equity where the grantee held the deed from his father without recording it, all the while representing to his family that the land was owned by all of his father's heirs, and the fraud could not have been discovered with reasonable diligence before the son recorded the deed and contracted for the sale and harvest of timber on the land. Greenlee v. Mitchell, 607 So. 2d 97, 1992 Miss. LEXIS 483 (Miss. 1992).

Testator, an Italian immigrant, after providing a life estate for his widow, devised vested remainder interest in bulk of his property to a sister and his nieces and nephews in equal shares. Where, upon death of widow, her administrator stated in sworn petition filed in court that testator's sister was dead, that there were no nieces or nephews of testator in Italy, and that administrator's mother was testator's sole heir, when in fact he and the widow knew other relatives existed in Italy entitled to share as tenants in common in testator's estate; such false representations constituted concealed fraud upon court and relatives, and relatives were not barred by adverse possession but were entitled to recover in equity their interests in testator's property, and for an accounting of rents and profits. Guiseppe v. Cozzani, 193 So. 2d 549, 1966 Miss. LEXIS 1287 (Miss. 1966).

Concealed fraud, tolling limitations, may not be predicated on the obtaining of a deed which was duly put on record. McMahon v. McMahon, 247 Miss. 822, 157 So. 2d 494, 1963 Miss. LEXIS 360 (Miss. 1963).

Fraud upon an equitable owner in the giving of a deed to a third person by the holder of the title is not concealed, so as to preclude the running of limitations, where the deed is placed on record. Rankin v. Mark, 238 Miss. 858, 120 So. 2d 435, 1960 Miss. LEXIS 473 (Miss. 1960).

This clause was held inapplicable to a situation where pursuant to an agreement to exchange lands one of the parties to the agreement went into possession although the other party failed to execute the agreement, in view of the fact that under the statute establishing title by adverse possession of ten years' knowledge of an open, notorious and adverse possession may be presumed. Leggett v. Norman, 192 Miss. 494, 6 So. 2d 578, 1942 Miss. LEXIS 40 (Miss. 1942).

To prevent the running of the statute on the ground of concealed fraud, complainant must allege and prove, first, the fraud and the act or acts constituting it; second, that such acts of fraud were committed by the defendant or someone in privity with him; third, that they were concealed from complainant by defendant or someone in privity with him; fourth, that complainant did not discover or know of the fraud over ten years before instituting suit; and fifth, that reasonable diligence was exercised to discover it sooner, or that complainant could not, by the exercise of reasonable diligence, have discovered it sooner. Jones v. Rogers, 85 Miss. 802, 38 So. 742, 1904 Miss. LEXIS 106 (Miss. 1904), overruled, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), writ of error dismissed, 214 U.S. 196, 29 S. Ct. 635, 53 L. Ed. 965, 1909 U.S. LEXIS 1908 (U.S. 1909).

Filing a bill to cancel a deed to land is not such constructive notice of the fraud charged as will put in operation the statute in cases of concealed frauds, before service of summons on or a publication for a defendant who has no actual notice thereof. North American Trust Co. v. Lanier, 78 Miss. 418, 28 So. 804, 1900 Miss. LEXIS 81 (Miss. 1900).

10. Pleading.

In an action regarding a mineral interest deed claimants who had made an adverse entry onto the property could not utilize the statutes of limitations, Code §§ 15-1-7, 15-1-9, against others who had taken constructive possession of the property. Mills v. Damson Oil Corp., 686 F.2d 1096, 1982 U.S. App. LEXIS 25678 (5th Cir. Miss. 1982).

A complaint seeking to set aside a deed is not demurrable as stating a cause of action barred by limitations where it alleges that the deed was obtained by fraud and duress, and while complainant was unable to attend to her affairs. McMahon v. McMahon, 243 Miss. 89, 137 So. 2d 520, 1962 Miss. LEXIS 318 (Miss. 1962).

Adverse possession must be pleaded and proved by party relying thereon. White v. Turner, 197 Miss. 265, 19 So. 2d 825, 1944 Miss. LEXIS 295 (Miss. 1944).

Bill to establish and quiet title to undivided interest in realty was not subject to special demurrer raising statute of limitations of ten years under this section [Code 1942, § 710], where, although admitting that holders under mesne conveyance from the other heirs of original owner are or have been in possession, the bill alleged that all such holders had notice of the outstanding interest of plaintiffs' ancestor, that they held permissibly as tenants in common, that they have never asserted any claim of ownership in the entire interest in the land, and that there never has been any ouster of plaintiffs for adverse holding as against them. White v. Turner, 197 Miss. 265, 19 So. 2d 825, 1944 Miss. LEXIS 295 (Miss. 1944).

Where the complaint in a proceeding to vacate a partition sale and decree thereunder was wholly silent upon the matter of possession, and it was reasonable to infer that the purchasers never went into possession, the defendants, in order to sustain their special demurrers raising the affirmative defense of the ten-year and two-year statutes of limitations, were not entitled to an inference that the purchaser had gone into possession. Taylor v. Twiner, 193 Miss. 410, 9 So. 2d 644, 1942 Miss. LEXIS 117 (Miss. 1942).

Complainant need not set out in bill facts showing what diligence exercised to discover fraud. Nestor v. Davis, 100 Miss. 199, 56 So. 347, 1911 Miss. LEXIS 27 (Miss. 1911).

Bill in equity on its face barred by limitation is demurrable, complainants suing by next friend not averring that they are infants. Thames v. Mangum, 87 Miss. 575, 40 So. 327, 1905 Miss. LEXIS 206 (Miss. 1905).

Where a bill in equity failed to aver that defendants or any of their privies committed the alleged acts of fraud relied upon to extend the period of limitation, and the particular acts which constituted the fraud were indicated by mere vague, indefinite, general and uncertain averments, the bill was demurrable. Jones v. Rogers, 85 Miss. 802, 38 So. 742, 1904 Miss. LEXIS 106 (Miss. 1904), overruled, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), writ of error dismissed, 214 U.S. 196, 29 S. Ct. 635, 53 L. Ed. 965, 1909 U.S. LEXIS 1908 (U.S. 1909).

RESEARCH REFERENCES

Am. Jur.

27A Am. Jur. 2d, Equity §§ 21 et seq., 161 et seq.

CJS.

54 C.J.S., Limitations of Actions §§ 60, 61, 218 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 111, March 1979.

§ 15-1-11. Limitations applicable to actions to recover land for defect in instrument.

Any person who has a right of action for the recovery of land because of any one or more of the following enumerated defects in any instrument, shall institute his suit therefor not later than 10 years next after the date when such instrument has been actually recorded in the office of the clerk of the chancery court of the county in which such real estate is situated and not afterwards:

(1) where it has not been signed by the proper officer of any corporation;

(2) where the corporate seal of the corporation has not been impressed on such instrument;

(3) where the record does not show such corporate seal;

(4) because the record does not show authority therefor by the board of directors and stockholders (or either of them) of a corporation;

(5) where such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been cancelled, withdrawn or forfeited;

(6) where the executor, administrator, guardian, assignee, receiver, master in chancery, agent or trustee, or other agency making such instrument, signed or acknowledged the same individually instead of in his representative or official capacity;

(7) where such instrument is executed by a trustee without record of judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited;

(8) where the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment;

(9) where the notarial seal is not shown of record;

(10) where the wording of the consideration may or might create an implied lien in favor of the grantor (by this is not meant an express vendor's lien retained).

If, at the time at which the right of any person to bring an action for the recovery of land because of any such defects, shall have first accrued, such persons shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him, may, notwithstanding that the period of limitations hereinbefore provided for shall have expired, bring an action to recover the land at any time within the period of limitations provided herein next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability no time to bring an action to recover the land beyond the period of limitations provided herein next after the time at which such persons shall have died, shall be allowed by reason of the disability of any other person. Moreover, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one years.

This section shall not, however, apply to forged instruments.

HISTORY: Codes, 1942, §§ 712, 714; Laws, 1942, ch. 300.

Cross References — Proceedings to confirm title to land, see §§ 11-17-1 to 11-17-37.

Proceedings for unlawful entry and detainer subsequent to sales for unpaid taxes, see §§ 11-25-3, 11-25-103.

Form of conveyance at tax sales, see § 27-45-23.

JUDICIAL DECISIONS

1. In general.

Mortgagor's claims that an assignee of a mortgage failed to conduct a foreclosure sale by public outcry in compliance with the deed of trust and that the 10-year statute of limitations for defective instruments under Miss. Code Ann. § 15-1-11 applied could not be resolved as the record did not contain the substituted trustee's deed. Tenn. Props. Inc. v. Gillentine, 66 So. 3d 695, 2011 Miss. App. LEXIS 329 (Miss. Ct. App. 2011).

Section 15-1-11 was inapplicable to an action for recovery of land based on fraud rather than a defect in an instrument. Greenlee v. Mitchell, 607 So. 2d 97, 1992 Miss. LEXIS 483 (Miss. 1992).

RESEARCH REFERENCES

ALR.

Res judicata as affected by limitation of jurisdiction of court which rendered judgment. 83 A.L.R.2d 977.

Appointment of guardian for incompetent or for infant as affecting running of statute of limitations against ward. 86 A.L.R.2d 965.

§ 15-1-13. Ten years' adverse possession gives title; exceptions.

(1) Ten (10) years' actual adverse possession by any person claiming to be the owner for that time of any land, uninterruptedly continued for ten (10) years by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to persons under the disability of minority or unsoundness of mind the right to sue within ten (10) years after the removal of such disability, as provided in Section 15-1-7. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one (31) years.

(2) For claims of adverse possession not matured as of July 1, 1998, the provisions of subsection (1) shall not apply to a landowner upon whose property a fence or driveway has been built who files with the chancery clerk within the ten (10) years required by this section a written notice that such fence or driveway is built without the permission of the landowner. Failure to file such notice shall not create any inference that property has been adversely possessed. The notice shall be filed in the land records by the chancery clerk and shall describe the property where said fence or driveway is constructed.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (3); 1857, ch. 57, art. 3; 1871, § 2149; 1880, § 2668; 1892, § 2734; 1906, § 3094; Hemingway's 1917, § 2458; 1930,

§ 2287; 1942, § 711; Laws, 1998, ch. 504, § 1, eff from and after July 1, 1998, and shall apply to claims arising on or after July 1, 1998.

Cross References — Powers and duties of Secretary of State, see § 7-11-11.
Bill in chancery to confirm and quiet title, see § 11-17-29.
Suits for ejectment, see §§ 11-19-1 through 11-19-105.
Recovery by land commissioner of public lands adversely held, see § 29-1-19.
Adverse possession of sixteenth sections or lieu lands, see § 29-3-7.
Effect on deed of adverse possession, see § 89-1-1.
Necessity of writing to convey land, see § 89-1-3.

JUDICIAL DECISIONS

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1. Possession in general.

In dispute among a brother, a sister-in-law, and another brother who was the husband of the sister-in-law, the chancery court did not err in its decision that use of 2.6 acres by one of the brothers was permissive, the permission was never terminated, and the use never became adverse. Cleveland v. Killen, 966 So. 2d 848, 2007 Miss. App. LEXIS 675 (Miss. Ct. App. 2007).

Award of two properties to adverse possessors by adverse possession was proper where their occupancy was more than sporadic or intermittent and was easily seen by the true owners. Buford v. Logue, 832 So. 2d 594, 2002 Miss. App. LEXIS 685 (Miss. Ct. App. 2002).

Heirs at law did not establish title to a disputed 40-acre tract of land by adverse possession as the possessory acts relied upon by the would be adverse possessors were insufficient to place the record title holder on notice that the lands were under an adverse claim of ownership; while each element of adverse possession was ultimately shown over a 60-year period, the heirs at law failed to prove that all of the elements to claim the property by adverse possession during any continuous 10-year period, as was required under Miss. Code Ann. 15-1-13. Cotton v. Cuba Timber Co., 825 So. 2d 669, 2002 Miss. App. LEXIS 69 (Miss. Ct. App. 2002).

In order to show adverse possession, a party must show possession, which is open notorious and visible, hostile, under claim of ownership, exclusive, peaceful, and continuous and uninterrupted for a period of 10 years. The existence of a fence around property for a period of at least 55 years offers a substantial basis for establishing adverse possession. Roy v. Kayser, 501 So. 2d 1110, 1987 Miss. LEXIS 2280 (Miss. 1987).

In an action to quiet title, the chancellor was justified in rejecting the permissive use theory, where plaintiff, claiming ownership against an adverse possessor, constructed a fence which he thereafter regarded as the boundary line of his property, operated his dairy business only on the property to the west of the fence he had constructed, pointed out the fence line to a surveyor as the western boundary of his property, and mortgaged all three tracts of his property on three separate occasions and none of the descriptions contained in those deeds of trust included the property claimed by the adverse possessor; thus, the chancellor was not manifestly wrong in finding that the property had been adversely possessed for the period prescribed in § 15-1-13. Hewlett v. Henderson, 431 So. 2d 449, 1983 Miss. LEXIS 2574 (Miss. 1983).

Ten years' possession by purchaser on foreclosure of trust deed and successors held, notwithstanding deed on foreclosure was not given, to give title as against grantor of trust deed. American Petrofina, Inc. v. Warren, 247 Miss. 552, 156 So. 2d 729, 1963 Miss. LEXIS 324 (Miss. 1963).

Where there has been a severance of minerals by an adverse possessor, the continued adverse possession of the surface by the severor or severee inures to the benefit of the severed mineral estate as against a true owner. Carlisle v. Federal Land Bank, 217 Miss. 289, 64 So. 2d 142, 1953 Miss. LEXIS 431 (Miss. 1953).

In a proceeding by alleged realty owners to be declared true owners of certain realty, where road running through the land in question has been maintained for twelve years or more, and the road has been regarded as a public one and traveled by many persons, a decree enjoining realty possessors from using the road was erroneous, despite the fact that evidence was insufficient to establish claim of ownership of realty by adverse possession. Ball v. Martin, 217 Miss. 221, 63 So. 2d 833, 1953 Miss. LEXIS 425 (Miss. 1953).

Purpose and intent of §§ 709 and 710, Code of 1942, and this section [Code 1942, § 711] is to guarantee good title to one purchasing land in good faith from another, where such other went into possession under recorded deed, valid on its face, and continued in uninterrupted possession for period of 31 years or more. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

Save as to easements, licenses or mere equities, abandonment is not effective to divest title to real estate, and fee simple titles are lost only by estoppel or by adverse possession or by maintainable tax sale. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

Statute (Laws 1934, ch 250) providing that all mortgagors of real estate located within the state who might have the right to set aside any title to such real estate by reason of the neglect of any trustee to insert it in a notice of sale of such real estate, the name of said mortgagor, should commence suit within 12 months from the passage of such act, and upon the failure of such mortgagor or other person to commence suit within such time, the right to bring such suit, and the remedy to enforce such right of action should be deemed thereafter to be completely extinguished, if applied so as to restrict the application of the general ten-year statute, made applicable by provision of statute (Code 1942, § 888), regulating the sale of lands under mortgages and deeds of trust, was not invalid as being an impairment of contract or as class or private legislation, since the right to sue is distinct from the right sought to be enforced and is remedial in character. Barbour v. Williams, 196 Miss. 409, 17 So. 2d 604, 1944 Miss. LEXIS 207 (Miss. 1944).

This section [Code 1942, § 711] does not require an enclosure as an essential to adverse possession. Snowden & McSweeny Co. v. Hanley, 195 Miss. 682, 16 So. 2d 24, 1943 Miss. LEXIS 176 (Miss. 1943).

A county taking a fifty-foot right of way about twenty-six miles long and constructing a concrete sea wall on the south fifteen feet thereof and an earthen fill on the remaining thirty-five feet acquired title by adverse possession under the ten-year statute. Henritzy v. Harrison County, 180 Miss. 675, 178 So. 322, 1938 Miss. LEXIS 27 (Miss. 1938).

Mere claim of title unaccompanied by adverse possession will not bar true owner. Leavenworth v. Reeves, 106 Miss. 722, 64 So. 660, 1914 Miss. LEXIS 12 (Miss. 1914).

Where adverse occupant conveyed land to another but shortly thereafter resumed possession, sale being verbally rescinded, there was no break in adverse possession so as to render it unavailing against one claiming under verbally rescinded title of vendee. Southern Pine Co. v. Pigott, 93 Miss. 281, 47 So. 381, 1908 Miss. LEXIS 127 (Miss. 1908).

Adverse possession for 10 years will defeat suit to set aside occupant's deed on ground it was executed to defeat creditors. Gordon v. Anderson, 90 Miss. 677, 44 So. 67, 1907 Miss. LEXIS 109 (Miss. 1907).

A mere scrambling possession is not sufficient under this section [Code 1942, § 711].Mitchell v. Bond (1904) 84 Miss 72, 36 So 148. Cohn v. Smith, 94 Miss. 517, 49 So. 611, 1909 Miss. LEXIS 376 (Miss. 1909); Mitchell v. Bond, 84 Miss. 72, 36 So. 148, 1904 Miss. LEXIS 13 (Miss. 1904).

2. —Nature of possession, generally.

Chancery court did not err in finding that landowners adversely possessed the disputed property because the evidence clearly established each element of adverse possession; the landowners' activities provided sufficient notice to the prior owners of the property that they staked a proper claim of ownership, and the landowners' possessory acts of hunting, fishing, running cattle, leasing the property, and planting on it were sufficiently hostile. Revette v. Ferguson, 271 So. 3d 702, 2018 Miss. App. LEXIS 635 (Miss. Ct. App. 2018).

Chancery court did not err in finding that landowners adversely possessed property because the evidence clearly established each element of adverse possession; the landowners' actions were open, notorious, and visible because they unfurled their flag on adjoining owners' land and kept it flying such that the adjoining owners would have actual or constructive knowledge of the landowners' presence, they hunted and fished on the disputed land, grazed cattle on the land, and erected fences. Revette v. Ferguson, 271 So. 3d 702, 2018 Miss. App. LEXIS 635 (Miss. Ct. App. 2018).

There was substantial evidence to support the chancery court's finding that landowners' possessed disputed property continuously and uninterruptedly for ten years because their possession of the property was continuous and without interruption well in excess of the ten-year period required by the statute. Revette v. Ferguson, 271 So. 3d 702, 2018 Miss. App. LEXIS 635 (Miss. Ct. App. 2018).

Chancery court did not err in finding that landowners adversely possessed the disputed property because the evidence clearly established each element of adverse possession; the landowners presented ample testimony regarding the actions that they, their invitees, and their lessees took on the disputed property, and no evidence was presented establishing a non-peaceful existence between the landowners and adjoining owners or their predecessors in interest. Revette v. Ferguson, 271 So. 3d 702, 2018 Miss. App. LEXIS 635 (Miss. Ct. App. 2018).

Trial court's finding of adverse possession in favor of appellees was proper; there were several claims of ownership by appellees that were visible for over 10 years, including testimony that appellees' family had used the property for approximately 60 years prior to appellants' purchase, and in 1987, boundaries of the family land were marked, and a survey corroborated these markings. Cronier v. ALR Partners L.P., 248 So. 3d 861, 2017 Miss. App. LEXIS 676 (Miss. Ct. App. 2017), cert. denied, 247 So. 3d 1264, 2018 Miss. LEXIS 308 (Miss. 2018).

Appellants did not need to be aware of the occupation for the 10 years, and title ripened in appellees when they completed 10 years of adverse possession, such that appellees' flagging of the property was not too remote in time; appellants' predecessors took no action to prevent appellees' occupation, and thus the evidence established the actual and hostile element. Cronier v. ALR Partners L.P., 248 So. 3d 861, 2017 Miss. App. LEXIS 676 (Miss. Ct. App. 2017), cert. denied, 247 So. 3d 1264, 2018 Miss. LEXIS 308 (Miss. 2018).

Record established decades of open, obvious control of the disputed property, including appellees' acts over the years in marking corners, creating firebreaks, fencing borders, leasing the property for hunting, and using the area's road to access other property, such that the adverse possession element of open, notorious, and visible possession was met. Cronier v. ALR Partners L.P., 248 So. 3d 861, 2017 Miss. App. LEXIS 676 (Miss. Ct. App. 2017), cert. denied, 247 So. 3d 1264, 2018 Miss. LEXIS 308 (Miss. 2018).

Appellees possessed the disputed parcel for a continuous period in excess of 10 years; there is no limit regarding remoteness of time, and the continuous and uninterrupted use of the property over a period of ten or more years meets the statutory requirements. Cronier v. ALR Partners L.P., 248 So. 3d 861, 2017 Miss. App. LEXIS 676 (Miss. Ct. App. 2017), cert. denied, 247 So. 3d 1264, 2018 Miss. LEXIS 308 (Miss. 2018).

Appellees had exhibited actions showing dominion and control over the property at issue for decades; the testimony showed that appellees had maintained and marked the boundaries of the property since the 1940s by fences, yellow blazes, and firebreaks, and there was testimony that appellant was told about the corner markers and boundaries. Cronier v. ALR Partners L.P., 248 So. 3d 861, 2017 Miss. App. LEXIS 676 (Miss. Ct. App. 2017), cert. denied, 247 So. 3d 1264, 2018 Miss. LEXIS 308 (Miss. 2018).

Chancellor properly found the testimony showed that appellees peacefully used and possessed the disputed property for decades, plus appellees and one party were peaceful neighbors for over 10 years, and it was only when appellant purchased the property that a boundary dispute ensued. Cronier v. ALR Partners L.P., 248 So. 3d 861, 2017 Miss. App. LEXIS 676 (Miss. Ct. App. 2017), cert. denied, 247 So. 3d 1264, 2018 Miss. LEXIS 308 (Miss. 2018).

In an action to quiet title on the basis of adverse possession, plaintiffs' predecessor in title held peaceful occupation of the land because their was no evidence establishing that he and defendants ever had any conflict regarding use or ownership of the land at issue. Hill v. Johnson, 27 So. 3d 426, 2009 Miss. App. LEXIS 448 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 63 (Miss. 2010).

In an action to quiet title on the basis of adverse possession, the possessory acts of plaintiffs' predecessor in title in bushhogging a field road, leasing the property to others, walking and driving on the road, and using the field road for all farming operations for 50 years were sufficient to establish title by adverse possession where defendants' use of the roadway was scant at best. It was immaterial that the predecessor in title granted an easement on the property, as possession could be exclusive notwithstanding the land being subject to rights that are no more than mere easements. Hill v. Johnson, 27 So. 3d 426, 2009 Miss. App. LEXIS 448 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 63 (Miss. 2010).

In an action to quiet title on the basis of adverse possession, the possessory acts of plaintiffs' predecessor in title in bushhogging a field road, leasing the property to others, walking and driving on the road, and using the field road for all farming operations were sufficient to establish that the use was open, notorious, and visible. Hill v. Johnson, 27 So. 3d 426, 2009 Miss. App. LEXIS 448 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 63 (Miss. 2010).

In an action to quiet title on the basis of adverse possession, the possessory acts of plaintiffs' predecessor in title in bushhogging a field road, leasing the property to others, and walking and driving on the road were sufficient to establish the actual or hostile element of adverse possesion. Hill v. Johnson, 27 So. 3d 426, 2009 Miss. App. LEXIS 448 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 63 (Miss. 2010).

In an action to quiet title on the basis of adverse possession, plaintiffs' predecessor in title asserted a claim of ownership by erecting a fence that limited use of the field road and established a claim of right through planting and harvesting trees, leasing the land to others, and bushhogging the field road continuously. Hill v. Johnson, 27 So. 3d 426, 2009 Miss. App. LEXIS 448 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 63 (Miss. 2010).

Lawyer admitted that in 1971, he thought his new building had been built on the adjacent property owner's lot. He then set out in a deliberate attempt to adversely possess the 17 foot strip of land belonging to the out-of-state property owner, by building a fence, quitclaiming the property to his wife, and vice versa, and utilizing a false survey, before finally contacting the property owner in 1998 regarding his claim of adverse possession; because the lawyer knew he did not own the strip he had no claim of ownership at the beginning of the statutory period and, thus, he could not gain title to the property through adverse possession. Blackburn v. Wong, 904 So. 2d 134, 2004 Miss. LEXIS 1354 (Miss. 2004).

Award of two properties to adverse possessors by adverse possession was proper where their occupancy was more than sporadic or intermittent and was easily seen by the true owners. Buford v. Logue, 832 So. 2d 594, 2002 Miss. App. LEXIS 685 (Miss. Ct. App. 2002).

The character of the land determines the type of possession necessary to acquire title by adverse possession. Holliman v. Charles L. Cherry & Assoc., Inc., 569 So. 2d 1139, 1990 Miss. LEXIS 204 (Miss. 1990).

Where an occupant of land in good faith, though mistakenly, thinks the land lies within the calls of his own deed, when in fact it actually lies within the calls of his adversary's deed, he acquires title to that land by adverse possession for statutory period. Alexander v. Hyland, 214 Miss. 348, 58 So. 2d 826, 1952 Miss. LEXIS 477 (Miss. 1952).

It is the rule that less notorious and obvious acts upon the land are essential to vest title in what are known as wild lands than lands suitable to occupancy by residing thereon and putting them to husbandry and farming. Broadus v. Hickman, 210 Miss. 885, 50 So. 2d 717, 1951 Miss. LEXIS 323 (Miss. 1951).

To acquire title by adverse possession, occupancy must be hostile from the inception of the period claimed, and entry upon land under grant of permissive use is not adverse or hostile to owner. Eddy v. Clayton, 44 So. 2d 395 (Miss. 1950).

Possession of the mortgagee is not considered hostile to the interest of a mortgagor during the continuance of the relationship of mortgagor and mortgagee. Heidelberg v. Duckworth, 206 Miss. 388, 40 So. 2d 179, 1949 Miss. LEXIS 269 (Miss. 1949).

No adverse user can arise from a use permissive in its inception until a distinct and positive assertion of a right hostile to the owner had been brought home to him. Williams v. Patterson, 198 Miss. 120, 21 So. 2d 477, 1945 Miss. LEXIS 174 (Miss. 1945).

Possession attributable to an easement will not be regarded as adverse to the fee owner until there is notice of a hostile claim to the fee. Williams v. Patterson, 198 Miss. 120, 21 So. 2d 477, 1945 Miss. LEXIS 174 (Miss. 1945).

The character and type of "adverse possession" required under Code 1942, § 717, limiting the time for attacking validity of tax sale to the state, is that pertaining to ten years adverse possession, and not that under Code 1942, § 716 respecting three years actual occupation under a tax title. Leavenworth v. Claughton, 197 Miss. 606, 20 So. 2d 821, 1945 Miss. LEXIS 300 (Miss. 1945).

When a fence, or a hedge-row, or the like, is relied upon to delineate the boundary of an adverse claim, the applicable rule is whether the enclosure, like other acts of possession, is sufficient to fly the flag over the land, and put the true owner upon notice that his land is held under an adverse claim of ownership. Snowden & McSweeny Co. v. Hanley, 195 Miss. 682, 16 So. 2d 24, 1943 Miss. LEXIS 176 (Miss. 1943).

While, under the ten-year adverse possession statute one may acquire title to land without actually occupying it, either himself or by tenant, but by merely cultivating, pasturing, cutting and selling timber, and other acts of ownership and control over the same, under the three-year statute it is required that there be actual occupancy for three years, and not the mere exercise of acts of ownership and control such as would give title by adverse possession without actual occupation. Smith v. Anderson, 193 Miss. 161, 8 So. 2d 251, 1942 Miss. LEXIS 103 (Miss. 1942).

In ejectment, instruction that if defendant's occupancy and claim of title had been questioned or disputed defendant could not have verdict held erroneous as injecting element not required by adverse possession statute. May v. Culpepper, 177 Miss. 811, 172 So. 336, 1937 Miss. LEXIS 170 (Miss. 1937).

Uninterrupted possession of land for statutory period will not vest title unless open, notorious, and exclusive. Staton v. Henry, 130 Miss. 372, 94 So. 237, 1922 Miss. LEXIS 221 (Miss. 1922).

Possession must be adverse. Jackson Naval Stores Co. v. Tootle, 96 Miss. 486, 51 So. 801, 1910 Miss. LEXIS 192 (Miss. 1910).

A hostile, actual, open and notorious, exclusive and continuous occupancy for the statutory period is essential to constitute effective adverse possession. McCaughn v. Young, 85 Miss. 277, 37 So. 839, 1909 Miss. LEXIS 381 (Miss. 1909).

A possession which is adverse and actually known to the true owner is equivalent to a possession which is open and notorious. McCaughn v. Young, 85 Miss. 277, 37 So. 839, 1909 Miss. LEXIS 381 (Miss. 1909).

3. — —Separate estate in minerals.

The prior owner of a tract of land did not acquire ownership of a disputed one-quarter mineral interest by adverse possession where he had entered into possession of the tract believing that he only owned one-quarter of the minerals and had made statements over the years to that effect and where he had admitted in a settlement agreement that a mutual mistake had occurred when he acquired the land and that he had never had actual or constructive possession of the disputed mineral interest. Florida Gas Exploration Co. v. Searcy, 385 So. 2d 1293, 1980 Miss. LEXIS 2002 (Miss. 1980).

Adverse possession of the surface without active production and appropriation of materials, is not adverse possession of severed mineral rights. Moffett v. International Paper Co., 243 Miss. 562, 138 So. 2d 492, 139 So. 2d 655, 1962 Miss. LEXIS 376 (Miss. 1962).

After title to the surface estate has been severed from title to the underlying mineral estate, title to the minerals cannot be acquired by adverse possession of the surface alone. Huddleston v. Peel, 238 Miss. 798, 119 So. 2d 921, 1960 Miss. LEXIS 465 (Miss. 1960).

Adverse possession of the surface will not operate as an adverse possession of a separated estate in the minerals. Lee v. Lee, 236 Miss. 260, 109 So. 2d 870, 1959 Miss. LEXIS 316 (Miss. 1959).

Possession of surface is not adverse to ownership of minerals. Aultman v. Kelly, 236 Miss. 1, 109 So. 2d 344, 1959 Miss. LEXIS 287 (Miss. 1959).

Where minerals had been severed from the surface and defendants, claiming under a color of title of a void tax deed, although exercising acts of ownership of which the surface was susceptible, had never taken actual possession of any of the minerals, they did not acquire rights to the minerals by adverse possession, so that plaintiffs who held mineral rights to the land through inheritance from the grantor of the surface rights did not lose their rights to the minerals by limitations or laches. White v. Merchants & Planters Bank, 229 Miss. 35, 90 So. 2d 11, 1956 Miss. LEXIS 583 (Miss. 1956).

Where grantor did not sign a deed to the bank and where later the bank conveyed surface and one-half mineral interest to grantee but the bank reserved one-half mineral interest in the possession of bank and possession was open, continuous and adverse more than ten years, this possession of the grantee inured to the benefit of the bank as against heirs of original grantor and the bank had good title to the one-half mineral interest reserve. Carlisle v. Federal Land Bank, 217 Miss. 289, 64 So. 2d 142, 1953 Miss. LEXIS 431 (Miss. 1953).

4. — —Particular cases.

Chancery court did not err in finding a claimant did not adversely possess approximately eighty acres of unimproved land, in accordance with Miss. Code Ann. § 15-1-13(1), because testimony by two owners of the land established they believed the claimant was a co-tenant and given the claimant's illusory position as a co-tenant, none of the claimant's actions would have given the owners notice he was attempting to adversely possess the property; the claimant and the owners were relatives. Dean v. Slade, 63 So. 3d

1230, 2010 Miss. App. LEXIS 608 (Miss. Ct. App. 2010), cert. denied, 63 So. 3d 1229, 2011 Miss. LEXIS 310 (Miss. 2011), cert. denied, 2014 Miss. LEXIS 605 (Miss. Dec. 11, 2014).

Award of title to a disputed tract of land to the adjoining landowners by virtue of adverse possession proper, in part because evidence that those landowners had constructed a barbed-wire fence encompassing the disputed property some 60 years ago was compelling evidence of adverse possession; the landowners had also planted crops and continually harvested timber. Apperson v. White, 950 So. 2d 1113, 2007 Miss. App. LEXIS 126 (Miss. Ct. App. 2007).

If a public road runs through the property of one and deadends on the property of another, and for 10 years the latter landowner (and persons acting on his behalf and with his permission) are the only ones to use the road, no abandonment occurs. It is not necessary that interlopers or sightseers or persons without any ownership interest or business on the latter's property use the road, for the owner of the land on whose property the road deadends is, as much as any other, a member of the general public, and as able in law to interrupt the period of prescription. McNeely v. Jacks, 526 So. 2d 541, 1988 Miss. LEXIS 305 (Miss. 1988).

Chancellor's order confirming and quieting title in landowner was proper where landowner's mother had claimed disputed property from 1945 until she deeded it to landowner in 1973; use of this property was exclusive and peaceful, continuous for 41 years, actual, open, and notorious, and under claim of right; evidence showed that disputed property was under fence for purpose of grazing cows from 1942 until mid-1960's, and fence remained in repair well enough to keep cattle until at least 1972; it does not matter whether land claimed under adverse possession is within "call of the title deeds," or is in same quarter section or section as land lies which is described in deed; since requirements of adverse possession had been established by fence around disputed property and continued use of property for more than 40 years, once title ripened by adverse possession it was not necessary that fence be standing, or even in existence, when suit was filed. Pieper v. Pontiff, 513 So. 2d 591, 1987 Miss. LEXIS 2832 (Miss. 1987).

Acquisition of one-half interest in property by adverse possession was not established where former wife's occupancy of premises was not exclusive, being shared with husband; interest of former wife in property was at best homestead interest, her legal relationship with husband regarding title being analogous to that of cotenants, which would have required effective communication of intent and legal ouster of husband from one-half interest in question, neither of which was shown. Davis v. Davis, 508 So. 2d 1062, 1987 Miss. LEXIS 2527 (Miss. 1987).

Grantor does not reacquire title by adverse possession as against grantee where although, subsequent to conveyance to grantee, grantor keeps land conveyed under fence and marked with posted signs, grantor's use is with permission of grantee. Johnson v. Black, 469 So. 2d 88, 1985 Miss. LEXIS 2086 (Miss. 1985).

Three years actual occupancy by the complainants' predecessor was sufficient to begin the running of the statute, and possession was not lost by the adverse claimant when he moved from the land but was continued by his payment of taxes each year either by himself or his descendants, and where the defendants had only slight and sporadic possession of the land and did not protest payments of taxes or possession, title vested in the complainants by the continuous adverse possession subsequent to the ouster of the cotenants. Hardy v. Lynch, 258 So. 2d 414, 1972 Miss. LEXIS 1495 (Miss. 1972).

While it was undisputed that a person claiming title to a three-acre tract was in continuous, open, and exclusive possession of it for more than 40 years, having fenced it during that time and used it as a garden and for fruit trees, and where he testified that he entered possession without the permission of the corporate landowner, and the landowner's chairman, although invited to say that he gave the possessor permission to enter the land, declined to say so, title by adverse possession was established, and conversations taking place years after the statutory period of 10 years had elapsed between the chairman and the possessor about the possible buying or swapping some of the possessor's land for some of the corporation's land, were insufficient to prevent adverse possession on the theory of permissive use. McSwain v. B. M. Stevens Co., 247 So. 2d 707, 1971 Miss. LEXIS 1451 (Miss. 1971).

Land used as a parking area could not be the subject of a right of occupancy by adverse possession where the evidence was clear that, while the plaintiff's tenants used this parking area from time to time, the tenants of the defendant and its predecessor in title also used the area for parking, so that the use was joint and not exclusive. Fant v. Standard Oil Co., 247 So. 2d 132, 1971 Miss. LEXIS 1437 (Miss. 1971).

A son of intestate could not claim title to land by adverse possession against a widow who had not claimed any interest in the property because of mistaken idea of invalidity of her marriage and where the son kept the property under the idea that his stepmother had no interest. Bonds v. Bonds, 226 Miss. 348, 84 So. 2d 397, 1956 Miss. LEXIS 406 (Miss. 1956).

Where claimant executed a lease on lot 1 of block 4 of an addition, the lease did not constitute adverse possession of lot 8 of block 3 of addition, and adverse possession does not begin to run until there was actual occupancy of lot 8. Caillouet v. Martin, 210 Miss. 632, 50 So. 2d 351, 1951 Miss. LEXIS 301 (Miss. 1951).

In an action by the record owner of land to remove defendant's claim thereto as a cloud upon its title, wherein defendant by cross bill asserted title to the land by adverse possession, the burden was upon the defendant to show that he was vested with title by adverse possession to the disputed area, and to do so it was necessary for him to show that he alone, or he and his predecessors in title together, had had actual open, hostile, peaceable, exclusive, continuous possession of the land for ten years, under claim of ownership thereto. Southern Naval Stores Co. v. Price, 202 Miss. 116, 30 So. 2d 505, 1947 Miss. LEXIS 248 (Miss. 1947).

Only statute which purchaser at void tax sale could invoke in owner's suit was the 10-year statute of adverse possession, and this only as to land actually occupied by the purchaser and not to the calls of the deed. Meyerkort v. Warrington, 19 So. 2d 433 (Miss. 1944).

Where bank and predecessors had open, peaceable possession of land for forty-five years, exercising ordinary acts of ownership and paying taxes, conclusive presumption obtained that bank had perfect title, and it could not be held liable to subsequent purchaser under warranty deed for expense of procuring new patent from State, as quitclaim deed, because forfeited tax land patents of predecessor of bank were void. Presley v. Haynes, 182 Miss. 44, 180 So. 71, 1938 Miss. LEXIS 141 (Miss. 1938).

Where there has been open, continuous occupancy, possession and use of land for more than forty-five years under void forfeited tax land patent, State receiving taxes from possessor, title will be deemed as perfect as under ten-year statute against private owner. Presley v. Haynes, 182 Miss. 44, 180 So. 71, 1938 Miss. LEXIS 141 (Miss. 1938).

Plaintiff holding lands for statutory period under belief that it was within the calls of his deed obtained title by adverse possession, where he was in actual open, continuous, exclusive possession for such period. Schuler v. McGee, 127 Miss. 873, 90 So. 713, 1921 Miss. LEXIS 291 (Miss. 1921).

Merely cutting rails, boards, etc., and posting land against trespassers is insufficient to establish adverse possession. A. W. Stevens Lumber Co. v. Hughes, 38 So. 769 (Miss. 1905).

5. —Payment of taxes.

Evidence that the father of adverse claimant, with the permission of the then owner of the land, had built a fence around the disputed acreage in 1907, while title thereto was in the State, and for some time afterwards the fence was not kept in good repair so that neighborhood cattle grazed at will thereon after crops were gathered, and claimant had failed to have the property assessed for taxes, did not show exclusive possession in the adverse claimant as against the rights of purchaser under a valid tax sale.

Harmon v. Buckwalter, 233 Miss. 761, 102 So. 2d 895, 1958 Miss. LEXIS 438 (Miss. 1958).

As a defense to an action by a successor in title to redeem encumbered land from the holder of a trust deed who had purportedly purchased the encumbered land at an invalid trustee's foreclosure sale, and had taken possession of the land and paid the taxes thereon for 24 years, the holder of the trust deed could rely on either this section [Code 1942, § 711] or Code 1942, § 718, as a mortgagee in possession after a condition broken, notwithstanding Code 1942, § 888, providing in part that an error in the mode of sale such as makes a sale void would not be cured by any statute of limitations, except after the 10-year statute of adverse possession. Gulfport Farm & Pasture Co. v. Hancock Bank, 232 Miss. 289, 98 So. 2d 862, 1957 Miss. LEXIS 474 (Miss. 1957), cert. denied, 358 U.S. 67, 79 S. Ct. 122, 3 L. Ed. 2d 106, 1958 U.S. LEXIS 178 (U.S. 1958).

Even if a tax deed had been defective or void for failure to advertise the tax sale or to give the land owner notice as to redemption, it would still have operated as color of title and formed a sufficient basis upon which adverse possession would ripen into title, and since defendants had admittedly deprived the complainant of possession of land for considerably more than ten years prior to the complainant's action for confirmation of his title, the complainant could not prevail. Trotter v. Roper, 229 Miss. 784, 92 So. 2d 230, 1957 Miss. LEXIS 325 (Miss. 1957).

Where minerals had been severed from the surface, and defendants, claiming under a color of title of a void tax deed, although exercising acts of ownership of which the surface was susceptible, had never taken actual possession of any of the minerals, they did not acquire rights to the minerals by adverse possession, so that plaintiffs who held mineral rights to the land through inheritance from the grantor of the surface rights did not lose their rights to the minerals by limitations or laches. White v. Merchants & Planters Bank, 229 Miss. 35, 90 So. 2d 11, 1956 Miss. LEXIS 583 (Miss. 1956).

Where owner inquired from time to time as to whether taxes were being paid, mortgagee in possession had the duty to inform the owner that he was claiming the land as his own. Heidelberg v. Duckworth, 206 Miss. 388, 40 So. 2d 179, 1949 Miss. LEXIS 269 (Miss. 1949).

Where there has been open, continuous occupancy, possession and use of land for more than forty-five years under void forfeited tax land patent, State receiving taxes from possessor, title will be deemed as perfect as under ten-year statute against private owner. Presley v. Haynes, 182 Miss. 44, 180 So. 71, 1938 Miss. LEXIS 141 (Miss. 1938).

One holding land for more than 10 years is entitled to ejectment against one taking possession on ground his grantors paid taxes thereon. Moore v. Neill, 117 Miss. 862, 78 So. 774, 1918 Miss. LEXIS 224 (Miss. 1918).

Payment of taxes will not render defective possession sufficient to ripen into title; at most mere evidence of claim of ownership. Leavenworth v. Reeves, 106 Miss. 722, 64 So. 660, 1914 Miss. LEXIS 12 (Miss. 1914).

With respect to wild land not susceptible of occupancy, improvement or cultivation, paying taxes for a long term of years, the former owner neither paying nor asserting any claim, using the timber with the knowledge of the former owner, placing mortgages of record and offering the land for sale, evidence adverse possession. McCaughn v. Young, 85 Miss. 277, 37 So. 839, 1909 Miss. LEXIS 381 (Miss. 1909).

6. —Wild land.

Substantial evidence supported the chancellor's classification of the land as wild because he visited the land and observed its characteristics and topography; the chancellor found that the only improvements to the land included a small section of fencing. Revette v. Ferguson, 271 So. 3d 702, 2018 Miss. App. LEXIS 635 (Miss. Ct. App. 2018).

Neither actual occupation, cultivation, nor residence are necessary to constitute actual possession when the property is so situated as not to admit any permanent useful improvement, and the continued claim of the party has been evidenced by public acts of ownership, such as he would exercise over property which he claimed in his own right, and would not exercise over property which he did not claim. Broadus v. Hickman, 210 Miss. 885, 50 So. 2d 717, 1951 Miss. LEXIS 323 (Miss. 1951).

With respect to wild land not susceptible of occupancy, improvement or cultivation, paying taxes for a long term of years, the former owner neither paying nor asserting any claim, using the timber with the knowledge of the former owner, placing mortgages of record and offering the land for sale, evidence adverse possession. McCaughn v. Young, 85 Miss. 277, 37 So. 839, 1909 Miss. LEXIS 381 (Miss. 1909).

Where the land will not admit of permanent useful improvement and the continued claim of possession is evidenced by public acts of ownership, actual occupation, cultivation and residence are unnecessary. McCaughn v. Young, 85 Miss. 277, 37 So. 839, 1909 Miss. LEXIS 381 (Miss. 1909).

7. Color of title, generally.

Where a party enters into possession of land under color of title, he is not considered as the mere disseizor, and confined to the part of premises in his actual occupancy, but his claim extends to all the lands embraced in the deed which he claims. Smith v. Cook, 213 Miss. 876, 58 So. 2d 27, 1952 Miss. LEXIS 437 (Miss. 1952).

Color of title, coupled with actual possession of a part of the land constitutes constructive possession of the whole, and the adverse possession runs to the whole tract. Page v. O'Neal, 207 Miss. 350, 42 So. 2d 391, 1949 Miss. LEXIS 347 (Miss. 1949).

Where one enters without color of title, his title by adverse possession, if any, runs only to such part of the land as was actually held by him in possession or enclosed or otherwise actually and continuously occupied by him for the statutory period of ten years. Page v. O'Neal, 207 Miss. 350, 42 So. 2d 391, 1949 Miss. LEXIS 347 (Miss. 1949).

Adverse claimants and predecessors in title, who were without color of title by parol gift, deed or other writing to any part of the disputed tract, could claim title by adverse possession to such portion only as was actually and continuously used, cultivated or occupied, adversely to the owner of the record title. Kersh v. Lyons, 195 Miss. 598, 15 So. 2d 768, 1943 Miss. LEXIS 173 (Miss. 1943).

Color of title to whole tract coupled with actual possession of part constitutes constructive possession of whole. Native Lumber Co. v. Elmer, 117 Miss. 720, 78 So. 703, 1918 Miss. LEXIS 216 (Miss. 1918).

Color of title cannot be created by parol grant so as to establish adverse possession; parol color of title applies only in favor of vendee against vendor and persons claiming under him. Brooks-Scanlon Co. v. Childs, 113 Miss. 246, 74 So. 147, 1916 Miss. LEXIS 42 (Miss. 1916).

Without color of title adverse possession gives title only to land actually and continuously occupied. Dedeaux v. Bayou Delisle Lumber Co., 112 Miss. 325, 73 So. 53, 1916 Miss. LEXIS 114 (Miss. 1916).

8. —What constitutes.

A warranty deed to the right of redemption and the forfeited tax land patent issued by the state, constituted a color of title. Jones v. Jones, 226 Miss. 378, 84 So. 2d 414, 1956 Miss. LEXIS 408 (Miss. 1956).

Generally, tax deed gives color of title although it is invalid or even where absolutely void, providing description of the property is legally sufficient. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

Entry into possession of land under a parol gift from another, who had no title by record or otherwise, does not constitute color of title. Page v. O'Neal, 207 Miss. 350, 42 So. 2d 391, 1949 Miss. LEXIS 347 (Miss. 1949).

Instrument containing granting clause purporting to "convey and warrant at my death" to a named person in consideration of love and affection constituted sufficient color of title to support claim of adverse possession, regardless of its legal character as testamentary or otherwise. Downing v. Starnes, 35 So. 2d 536 (Miss. 1948).

A trustee's deed executed to the purchaser at foreclosure sale is sufficient to constitute color of title even though the trust deed is foreclosed by the original trustee named after the appointment of a substituted trustee as a matter of record. Douglas v. Skelly Oil Co., 201 Miss. 23, 28 So. 2d 227, 1946 Miss. LEXIS 354 (Miss. 1946).

Regardless of whether a wife may be permitted to acquire, as against her husband, title to the homestead by the mere assertion of title or other act in pais, it is settled that, where the wife holds the homestead under color of title arising from a recorded conveyance in her name, and evinces her claim by acts of ownership and control, all to the knowledge of the husband, she may acquire complete title thereto by adverse possession for the statutory period. Lincoln v. Mills, 191 Miss. 512, 2 So. 2d 809, 3 So. 2d 835, 1941 Miss. LEXIS 153 (Miss. 1941).

Void tax deed good color of title on which to base adverse possession. Hamner v. Yazoo Delta Lumber Co., 100 Miss. 349, 56 So. 466, 1911 Miss. LEXIS 48 (Miss. 1911).

9. —Particular cases.

Former wife cannot claim title by adverse possession where no deed purports to convey any interest in property to her, although such claim would be recognized where one enters into possession under mistaken belief that land in question lies within calls of deed. Davis v. Davis, 508 So. 2d 1062, 1987 Miss. LEXIS 2527 (Miss. 1987).

Widow's act in recording deed, valid on its face, to her from purchaser of her deceased husband's land at foreclosure sale, gave notice to world that she claimed to be owner of land and that act was act of ouster as against anyone else claiming the land, including her six children, whose ages ranged from 1 to 12 years, and warranty deed by her after she had been in uninterrupted possession under this recorded deed for more than 34 years conveyed good title. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

The execution and recording of a warranty deed by several cotenants of land to a stranger to the title set in motion an adverse claim against a cotenant who had not signed the deed, which was thereupon made available to the grantee, who, by implementing such claim by adverse possession through himself and his successors in title for a period beyond the statutory limitation, matured the disseisin into complete ownership. Davis v. Gulf Refining Co., 202 Miss. 808, 32 So. 2d 133, 1947 Miss. LEXIS 344 (Miss. 1947).

The fact that another occupies land for several months as a tenant at will of one having color of title, pending execution of a lease between them, is not a break in the character of adverse possession claimed by the holder of color of title. Douglas v. Skelly Oil Co., 201 Miss. 23, 28 So. 2d 227, 1946 Miss. LEXIS 354 (Miss. 1946).

10. Parol conveyance.

Claim of title to land under parol gift, accompanied by entry and adverse holding for 10 years, ripens into good title. Chatman v. Carter, 209 Miss. 16, 45 So. 2d 841, 1950 Miss. LEXIS 358 (Miss. 1950).

For parol gift of land, accompanied by entry and adverse possession, to ripen into good title, the clearest and most satisfactory evidence is required as to fact of gift, identity of land, and exclusiveness of possession. Chatman v. Carter, 209 Miss. 16, 45 So. 2d 841, 1950 Miss. LEXIS 358 (Miss. 1950).

Execution of oil and gas deed by widow of one claiming land under parol gift is evidence of ouster, and, combined with payment of taxes and acts of ownership over land thenceforth, made issue as to whether or not title ripened into good title. Chatman v. Carter, 209 Miss. 16, 45 So. 2d 841, 1950 Miss. LEXIS 358 (Miss. 1950).

It is settled law in this state that a parol gift of land where the donee goes into possession, accompanied by 10 years' adverse possession, will vest the title in the donee. Elmer v. Holmes, 189 Miss. 785, 199 So. 84, 1940 Miss. LEXIS 169 (Miss. 1940).

A pleading which shows a parol exchange of lands, followed by continuous actual adverse possession and claim of ownership for more than ten years sufficiently manifests title against all persons not under disability. Bynum v. Stinson, 81 Miss. 25, 32 So. 910, 1902 Miss. LEXIS 119 (Miss. 1902).

Adverse possession, though under a parol gift, if it continue for ten years, confers a perfect title. Davis v. Davis, 68 Miss. 478, 10 So. 70, 1891 Miss. LEXIS 52 (Miss. 1891).

11. Tax sales.

Title ad ownership of land does not depend upon the validity or invalidity of the tax sales and the Forfeited Tax Land Patents which were subsequently acquired since if the sales were legally and validly made then the titles that are derived through the Forfeited Tax Land Patents are good under § 15-1-15 and, on the other hand, if one or more of the tax sales was invalid or illegal then title to the lands in question remained in individuals and thereby was subject to acquisition by purchasers through adverse possession under § 15-1-13. United States v. 613.86 Acres of Land, 507 F. Supp. 327, 1980 U.S. Dist. LEXIS 16079 (N.D. Miss. 1980).

Decree in a confirmation suit adjudicating the validity of a patent from the state to tax forfeited land, which did not purport to affect claims of defendant in a subsequent quiet title action either by adverse possession or under a quitclaim deed from the owner at the time of the tax sale, does not preclude such defendant from asserting adverse possession or invalidity of the tax sale. Comfort v. Landrum, 52 So. 2d 658, 1951 Miss. LEXIS 531 (Miss. 1951).

Claimant acquired title under § 717, Code of 1942, the two-year tax statute of limitations, where there was an invalid tax sale to the state of three parcels of land which were adjoining and constituted and should have been sold as one tract, but where the claimant exercised ownership over the property, paid taxes, gave a turpentine lease under which visible acts upon trees performed by the lessee, and where the claimant developed a program of reforestation. Broadus v. Hickman, 210 Miss. 885, 50 So. 2d 717, 1951 Miss. LEXIS 323 (Miss. 1951).

Sale of land to the state for taxes does not break the continuity of adverse possession if the tax sale is redeemed within the time required by law. Douglas v. Skelly Oil Co., 201 Miss. 23, 28 So. 2d 227, 1946 Miss. LEXIS 354 (Miss. 1946).

Title by adverse possession disclosed against original owner of land disappeared when the land was sold for taxes under which the purchaser obtained the land free from the claim of adverse possession. Hall v. State, 17 So. 2d 325 (Miss. 1944).

12. Property held adversely.

Chancery court did not abuse its discretion in granting a couple's motion to quiet and confirm title because substantial evidence supported its determination that the couple proved adverse possession by clear and convincing evidence; the couple erected a fence, placed horses within it, and maintained control of the fenced area, and they maintained a level of usage of the property that would have placed the record owner on notice of the occupation. Little v. Richey, 230 So. 3d 336, 2017 Miss. App. LEXIS 627 (Miss. Ct. App. 2017).

Substantial evidence supported the chancellor's finding that appellee proved adverse possession, as he was the only person who utilized the disputed property, appellant conceded that he knew appellee was always building on this piece of property, and there was no indication that appellee attempted to conceal his use of the property, and appellee's possession of the land began in 2000 and his use was continuous and uninterrupted until 2012. Powell v. Meyer, 203 So. 3d 648, 2016 Miss. App. LEXIS 674 (Miss. Ct. App. 2016).

In a suit to quiet title against property owners who held title to the disputed land, the adjoining landowners acquired title through adverse possession where they inherited land from their uncle, the uncle had long believed that the northern property line of his land was established by a fence line, and the uncle had openly and conspicuously used the property south of that fence line under a claim of ownership for more than 10 years. The uncle's mistaken believe that the fence was the northern boundary line of the property was sufficient to establish adverse possession, and there was substantial evidence to support the chancellor's finding that the uncle claimed ownership beginning in 1952 when he acquired the property. Webb v. Drewrey, 4 So. 3d 1078, 2009 Miss. App. LEXIS 97 (Miss. Ct. App. 2009).

Appellate court affirmed an award of an easement to the property owners pursuant to Miss. Code Ann. § 15-1-13 as the property owners established that they had used the gravel road that crossed the landowners' property from 1956 to 2002, that they made improvements on the land, and the use of the land was hostile. Griffin v. Brian Dev. Co., 938 So. 2d 337, 2006 Miss. App. LEXIS 678 (Miss. Ct. App. 2006).

Finding in favor of a property owner in his action seeking to enjoin another from trespassing on the property owner's property was appropriate because he owned the property as the record title holder; alternatively, he had met the elements of adverse possession, including claiming ownership for a period well in excess of the 10-year period for adverse possession contained in Miss. Code Ann. § 15-1-13(1). Wicker v. Harvey, 937 So. 2d 983, 2006 Miss. App. LEXIS 670 (Miss. Ct. App. 2006).

Plaintiff's possession of land was adverse, notwithstanding defendants' assertion that they were aware that the plaintiff was occupying and farming the land but, because she was a member of the family, they had never complained and permitted her to continue; the plaintiff never requested permission to use the land, she and her former husband farmed it and used it as pasture land, they cut timber from a portion of the disputed land and kept all the proceeds, and the defendants never sought any of the proceeds, and the plaintiff also leased the property and received all rental income, and again, the defendants never complained nor did they seek a portion of the rents. Peagler v. Measells, 743 So. 2d 389, 1999 Miss. App. LEXIS 129 (Miss. Ct. App. 1999).

A church was bound by a covenant in a deed giving it property for as long as a church should be maintained there and could not obtain title by adverse possession of the land used by a church but located in a quarter section not set forth in the deed, where the deed to the acreage upon which the church was built described the wrong quarter section but referred specifically to other land of the grantor. Wortman & Mann Ins. Agency v. Ivey, 222 So. 2d 137, 1969 Miss. LEXIS 1519 (Miss. 1969).

So long as a grantee occupies property by virtue of a covenant in a deed, his possession is not adverse to the grantor, and until the grantee brings to the attention of the landowner some notice that the grantee claims the land in a method hostile and adverse to the covenant, adverse possession is not established. Wortman & Mann Ins. Agency v. Ivey, 222 So. 2d 137, 1969 Miss. LEXIS 1519 (Miss. 1969).

A reservation of timber in a conveyance of land does not prevent persons claiming under foreclosure of a deed of trust executed by the grantee without excepting the timber, and under a tax sale, from acquiring title to the timber by adverse possession. Manar v. Smith, 236 Miss. 192, 109 So. 2d 652, 1959 Miss. LEXIS 308 (Miss. 1959).

Even though it was assumed that a lumber company, which acquired a warranty deed to land from the father and brother in which the children had an interest, became a tenant in common with the children, evidence showing that the lumber company upon acquiring the deed went into immediate possession of the land enclosed it with a fence, had land assessed and paid taxes thereon, had a caretaker to look after it, cut timber thereon, and claimed the land openly as its own, and the children for at least 18 years after they became of age came back and forth to their father's old homestead just across the highway from the land, indicated that the children knew that the lumber company was in actual possession of the land and claiming full title thereto for a longer period than ten years. Avera v. Turner Lumber Co., 230 Miss. 123, 92 So. 2d 458, 1957 Miss. LEXIS 351 (Miss. 1957).

In order to show adverse possession, there is a necessity for unequivocal acts showing an occupancy which is actual, continuous, and hostile, especially where such occupancy is by a member of a family against another. Coleman v. L. & M. Land & Mineral Corp., 54 So. 2d 213 (Miss. 1951).

Person in adverse possession of land for more than ten years becomes owner of land in his possession, though not in calls of his deed. Chatman v. Carter, 209 Miss. 16, 45 So. 2d 841, 1950 Miss. LEXIS 358 (Miss. 1950).

In suit to confirm title to land in which answer sets up ownership by defendants of part of land by adverse possession, proof by defendants as to land adversely possessed by them is admissible and proper description thereof can be obtained by survey. Chatman v. Carter, 209 Miss. 16, 45 So. 2d 841, 1950 Miss. LEXIS 358 (Miss. 1950).

Where the description of land sold at a tax sale did not cover all of the land on which the taxes had been levied, a purchaser from the state, who occupied the entire tract had no valid claim, as against the original owners, to that portion of the land not included in such description, and title thereto would not be lost to the original owner through any doctrine of laches short of the ten-year statute of limitations. Johnson v. Carter, 193 Miss. 781, 11 So. 2d 196, 1943 Miss. LEXIS 8 (Miss. 1943).

Where one of the parties to an agreement for the exchange of land failed to execute a deed to the property he exchanged, but the other party and her son moved thereon, the son continuing to occupy the land thereafter for many years and until the heirs of the first mentioned party brought an action in ejectment, the statute postponing the running of limitations until after the actual or constructive knowledge of concealed fraud was inapplicable, and would be inconsistent with the ten-year statute establishing title by adverse possession, since under the latter statute knowledge of an open, notorious and adverse possession may be presumed. Leggett v. Norman, 192 Miss. 494, 6 So. 2d 578, 1942 Miss. LEXIS 40 (Miss. 1942).

13. —Adjoining tract.

Substantial evidence supported a finding of adverse possession because property owners met their burden of proof through privity of possession with their predecessors in the use and maintenance of their properties. Mize v. Westbrook Constr. Co. of Oxford, LLC, 146 So. 3d 352, 2013 Miss. App. LEXIS 432 (Miss. Ct. App. 2013), rev'd, in part, 146 So. 3d 344, 2014 Miss. LEXIS 443 (Miss. 2014).

Where the landowners sought to remove a quitclaim deed from the record as a cloud upon their title, the quitclaim deed listed an old fence line, which was an old barbed wire fence, and the chancellor ruled in favor of landowners, the chancellor did not err in finding that the neighbors had not acquired the property by adverse possession. Ellison v. Meek, 820 So. 2d 730, 2002 Miss. App. LEXIS 341 (Miss. Ct. App. 2002).

Adverse possession was established by evidence showing possessors enjoyed complete and total possession of tract for 14 years and, during that 14 years period, the possessors maintained a fence, planted a garden, raised crops, pastured cattle and cut timber upon their holdings. Roy v. Kayser, 501 So. 2d 1110, 1987 Miss. LEXIS 2280 (Miss. 1987).

Witnesses' testimony as to predecessor-in-title's total dominion and control over a 4 acre tract south of a boundary-line fence established that he had acquired title to the property by adverse possession. Shows v. Watkins, 485 So. 2d 288, 1986 Miss. LEXIS 2380 (Miss. 1986).

School's possession of land adjoining land deeded to school trustees is shown to be adverse and under claim of ownership within limitations of deed to school by evidence that it has been enclosed by wire fence and line of white-washed trees for more than fifteen years; that school children have used it for playground and basketball court; that grantor pointed this land out as being included in deed and assisted in building new school building partly on it. Kelly v. Wilson, 204 Miss. 56, 36 So. 2d 817, 1948 Miss. LEXIS 342 (Miss. 1948).

In boundary line suit defendant's claim of adverse possession beyond line of her original tract should not be ignored. Gillespie v. Magruder, 92 Miss. 511, 46 So. 77, 1908 Miss. LEXIS 212 (Miss. 1908).

Adverse possession for ten years of a part of an adjoining tract, though claimed under the mistaken belief that it was within the calls of his own deed, gives title. Jones v. Gaddis, 67 Miss. 761, 7 So. 489, 1890 Miss. LEXIS 103 (Miss. 1890).

14. —Part of tract.

It was proper to grant a family trust title to a parcel of land because the trust adversely possessed the parcel; the trust staked an ownership claim from 1911 to 2016, it maintained and used the parcel for over one-hundred years without permission, it enjoyed unrestricted use of the parcel from 1911 to 2016, it used the parcel for a continuous and uninterrupted period of at least ten years, only the trust used the parcel after a fence was built around 1911, and its possession was peaceful. Collins v. Moore Family Trust 1999, 269 So. 3d 184, 2018 Miss. App. LEXIS 28 (Miss. Ct. App. 2018).

Chancery court did not err in denying siblings' claims for adverse possession or prescriptive easement with respect to a roadway because they failed to establish that their use of the roadway was hostile; the record was void of any evidence suggesting the siblings' use of the roadway was anything but peaceful, and the property owner testified that she never sought to bar the siblings from using the roadway but merely sought to have the siblings remove their lock from the gate on the roadway. Estate of Jones v. Pruitt, 243 So. 3d 212, 2017 Miss. App. LEXIS 574 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 70, 2018 Miss. LEXIS 215 (Miss. 2018).

Chancery court did not err in finding that siblings failed to establish that their deer-camp structure had encroached onto owners' property for the statutorily required ten years because the owners presented evidence that the structure was not encroaching upon their property as late as 2004; the siblings presented no evidence as to when the structure was enlarged to the extent that it began actually encroaching upon the owners' property. Estate of Jones v. Pruitt, 243 So. 3d 212, 2017 Miss. App. LEXIS 574 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 70, 2018 Miss. LEXIS 215 (Miss. 2018).

Pursuant to Miss. Code Ann. § 15-1-13(1), the neighbor's father's act of erecting a fence did not establish that the property was exclusive to the neighbor; the neighbor's act of cutting and planting pine trees on a portion of the property resulted in adverse possession, but where she did not cut or plant trees, she did not adversely possess that property. Cook v. Robinson, 924 So. 2d 592, 2006 Miss. App. LEXIS 173 (Miss. Ct. App. 2006).

A chancellor's decision that the defendants in a quiet title action failed to establish adverse possession of commercial property would be affirmed with the exception of a strip of the property on which a warehouse had been used exclusively during at least a 10-year period. West v. Brewer, 579 So. 2d 1261, 1991 Miss. LEXIS 253 (Miss. 1991).

Person in adverse possession of land can claim title by adverse possession to such portion only as is actually and continuously used, cultivated or occupied adversely to owner of record title. Chatman v. Carter, 209 Miss. 16, 45 So. 2d 841, 1950 Miss. LEXIS 358 (Miss. 1950).

Where one enters land without color of title, his title by adverse possession, if any, runs only to such part of the land as was actually held by him in possession or enclosed or otherwise actually and continuously occupied by him for the statutory period of ten years. Page v. O'Neal, 207 Miss. 350, 42 So. 2d 391, 1949 Miss. LEXIS 347 (Miss. 1949).

If the title was void as to a part of the land conveyed, the occupation of that part to which grantee had title would not give the grantee constructive possession of other land included in deed but not owned by grantor. Leavenworth v. Reeves, 106 Miss. 722, 64 So. 660, 1914 Miss. LEXIS 12 (Miss. 1914).

Cultivation of a part of a tract and acts of ownership over the remaining unenclosed portion without hindrance for ten years gives title to all. Gathings v. Miller, 76 Miss. 651, 24 So. 964, 1898 Miss. LEXIS 120 (Miss. 1898).

15. —Railroad right of way.

Where right of way for railroad purposes only was not abandoned until railroad sold its rights therein to plaintiff within ten years of suit to confirm his title to the land covered by such right of way, predicated on adverse possession, chancery court correctly sustained demurrers to the bill. Williams v. Patterson, 198 Miss. 120, 21 So. 2d 477, 1945 Miss. LEXIS 174 (Miss. 1945).

User of railroad right of way and cultivation as garden under claim of title gives title after 10 years. Mobile & O. R. Co. v. Strain, 125 Miss. 697, 88 So. 274, 1921 Miss. LEXIS 154 (Miss. 1921).

Title may be obtained to part of railroad right of way not necessary to business as common carrier. Mobile & O. R. Co. v. Strain, 125 Miss. 697, 88 So. 274, 1921 Miss. LEXIS 154 (Miss. 1921).

Running of trains over railroad held use of entire right of way in absence of inclosure by adverse claimant and adverse use. Alabama & V. R. Co. v. Joseph, 125 Miss. 454, 87 So. 421, 1921 Miss. LEXIS 97 (Miss. 1921).

To defeat the easement of a railroad company in lands in its right of way the possession must be distinctly hostile, and so manifested by acts inconsistent with the occupancy of the company, as fencing, etc. Wilmot v. Yazoo & M. V. R. Co., 76 Miss. 374, 24 So. 701, 1898 Miss. LEXIS 98 (Miss. 1898).

One obtaining adverse possession of a part of a railroad company's right of way and excluding the company therefrom for ten years acquires title. Paxton v. Yazoo & M. V. R. Co., 76 Miss. 536, 24 So. 536, 1898 Miss. LEXIS 93 (Miss. 1898).

16. —Sixteenth section lands.

The statute of limitations does not run against the reversion in a sixteenth section during the existence of a lease thereof. Weiler v. Monroe County, 76 Miss. 492, 25 So. 352, 1898 Miss. LEXIS 141 (Miss. 1898).

The sale in fee of sixteenth sections has never been authorized by law in this state. Weiler v. Monroe County, 76 Miss. 492, 25 So. 352, 1898 Miss. LEXIS 141 (Miss. 1898).

17. Persons entitled to claim adversely.

One who relies upon a conveyance by deed is not precluded from claiming adversely possessed land even though the land description in the deed does not include contiguous land adversely possessed by the predecessor in title. Stallings v. Bailey, 558 So. 2d 858, 1990 Miss. LEXIS 157 (Miss. 1990).

Levee board's claim of profit a'prendre which amounts to right of complete control of property is actually claim of title of land in fee, such that board must have complied with requirements of adverse possession, however, as board does not claim ownership to subject property, nor does board have statutory power to acquire title to land and therefore could not acquire fee title by adverse possession. McDonald v. Board of Mississippi Levee Comm'rs, 646 F. Supp. 449, 1986 U.S. Dist. LEXIS 18743 (N.D. Miss. 1986), aff'd, 832 F.2d 901, 1987 U.S. App. LEXIS 15499 (5th Cir. Miss. 1987).

A grantor may acquire title to land by adverse possession against his grantee providing the adverse possession is in such manner as to notify the grantee of the adverse possession. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445, 1957 Miss. LEXIS 349 (Miss. 1957).

Children, whose ages ranged from 1 to 12 years at time of death of their father, who lived on land during lifetime of father and knew that after his death mother claimed it, who knew mother sold land, and who neither inquired nor discovered their interest in land until youngest child was 47 years of age, exercised such complete indifference to, and disregard of, their rights that they should not, in equity and good conscience, be permitted to prevail over purchaser in good faith, for sufficient consideration. Boyd v. Entrekin, 209 Miss. 51, 45 So. 2d 848, 1950 Miss. LEXIS 360 (Miss. 1950).

Possession of land by owner and mortgagor, or his grantees, during life of deed of trust, cannot form basis of claim to adverse possession by him, since mortgagor has right to retain possession of property until foreclosure sale under deed of trust. Duncan v. Mars, 44 So. 2d 529 (Miss. 1950).

Repeated requests made by person in possession to owner for purchase of land is answer to any contention of adverse claim, since it is an acknowledgment of superior title and claim of owner. Eddy v. Clayton, 44 So. 2d 395 (Miss. 1950).

Ordinarily parent cannot claim possession of land adversely to minor child but may do so where child is adult, married and living separate and apart from parent at time adverse possession begins. Randall v. Mitchell, 41 So. 2d 44 (Miss. 1949).

Possession by mortgagee under void deed of trust and claim of color of title under a tax deed which failed to describe the land, with subsequent possession consisting of occupancy of the premises through the person who owned the land at the time of the purported tax sale, did not sustain defendant's claim of adverse possession and owner was entitled to decree canceling such claim as cloud upon his title. Heidelberg v. Duckworth, 206 Miss. 388, 40 So. 2d 179, 1949 Miss. LEXIS 269 (Miss. 1949).

18. —Tenant.

In view of evidence showing that defendants had recognized the validity of the title of complainants' predecessors in interest and had occupied the land as tenants, the action of the chancellor in confirming title in complainants was not manifestly wrong, since such recognition by the defendants destroyed any claim of title by adverse possession prior to that time, and there was no showing of any rupture of such relationship, or notice thereof, for as much as ten years prior to the institution of the action. Delancey v. Davis, 229 Miss. 475, 91 So. 2d 286, 1956 Miss. LEXIS 628 (Miss. 1956).

Possession by defendant as lessee of 40 acres of 120-acre tract of land involved in partition suit, did not defeat defendant's title by adverse possession to remaining 80 acres which he purchased at partition sale. Taylor v. Twiner, 195 Miss. 706, 16 So. 2d 31, 1943 Miss. LEXIS 179 (Miss. 1943).

Possession as a tenant is not adverse so as to give title thereby. Lucas v. New Hebron Bank, Inc., 181 Miss. 762, 180 So. 611, 1938 Miss. LEXIS 116 (Miss. 1938).

Grantee of life tenant, holding over after death of life tenant, was not in possession adverse to remaindermen, since such holding, being at sufference of the remaindermen was not inconsistent with the title and right to possession of the remaindermen. Thomasson v. Kinard, 153 Miss. 398, 121 So. 109, 1929 Miss. LEXIS 31 (Miss. 1929).

Adverse possession by a tenant runs from the time the landlord receives notice that the occupancy is hostile; and a tenant is not required to yield possession and again enter the premises before the statute will run in his favor. Greenwood v. Moore, 79 Miss. 201, 30 So. 609, 1901 Miss. LEXIS 39 (Miss. 1901).

19. —Cotenants, generally.

A possession by a cotenant in common with other owners is not exclusive possession for purposes of adverse possession. Nichols v. Gaddis & McLaurin, Inc., 222 Miss. 207, 75 So. 2d 625, 1954 Miss. LEXIS 641 (Miss. 1954), overruled, Quates v. Griffin, 239 So. 2d 803, 1970 Miss. LEXIS 1522 (Miss. 1970).

In a suit by cotenants to cancel as a cloud on their title the claims of cotenants which were purchased at a tax sale, the plaintiffs must establish their claim under the ten-year statute, before they can avail of any alleged laches as a defense to the suit. Smith v. Smith, 211 Miss. 481, 52 So. 2d 1, 1951 Miss. LEXIS 379 (Miss. 1951).

A claim of ownership conditioned upon the erroneous assumption that all of the cotenants were dead is not of such character as is required to vest title by adverse possession, especially as between tenants in common. Hurst v. J. M. Griffin & Sons, Inc., 209 Miss. 381, 46 So. 2d 440, 1950 Miss. LEXIS 402 (Miss. 1950).

The rule which prevents one tenant in common from purchasing an outstanding title to the common property and setting it up against his cotenant is founded upon the confidential relation that is presumed to exist between them, and has no application where the circumstances surrounding them negative any such relation, and show that they, though in law tenants in common, are not such in fact, and are asserting hostile claims against each other with reference to the common property. Ferguson v. Chancellor, 206 Miss. 518, 40 So. 2d 275, 1949 Miss. LEXIS 280 (Miss. 1949).

The statute does not run in favor of one claiming an undivided interest with others until there is claim of title as sole owner and possession in severalty by him or someone under whom he claims. Jonas v. Flanniken, 69 Miss. 577, 11 So. 319, 1891 Miss. LEXIS 95 (Miss. 1891).

20. — —Notice to.

Where, in an action to determine title to land, the record failed to show that two of the tenants in common had notice of the defendant cotenant's adverse claims, there was no ouster as to them, and plaintiff, claiming through them, was adjudicated to be vested with their respective interests. 231 Miss. 461, 95 So. 2d 563.

Where one of the tenants in common was an out-of-state resident, and it was not shown that she knew that her cotenants were claiming to be the exclusive owners of the property, and there was nothing charging her with such notice, the cotenants did not acquire her one-eighteenth undivided interest in the property by adverse possession. 231 Miss. 461, 95 So. 2d 563.

The mere recording alone of a fee simple deed by a cotenant does not impart notice to other cotenants of an adverse claim to land by a cotenant. Nichols v. Gaddis & McLaurin, Inc., 222 Miss. 207, 75 So. 2d 625, 1954 Miss. LEXIS 641 (Miss. 1954), overruled, Quates v. Griffin, 239 So. 2d 803, 1970 Miss. LEXIS 1522 (Miss. 1970).

Where a purchaser of realty at a void foreclosure sale claimed title to that realty by adverse possession of a tenant, who was a tenant in common the fact that the purchaser paid taxes on the property although it is strong evidence of a claim of title, it did not suffice to give notice of the purchaser's claim to the other cotenants. Nichols v. Gaddis & McLaurin, Inc., 222 Miss. 207, 75 So. 2d 625, 1954 Miss. LEXIS 641 (Miss. 1954), overruled, Quates v. Griffin, 239 So. 2d 803, 1970 Miss. LEXIS 1522 (Miss. 1970).

Tenant in common cannot acquire title against cotenant without notice; recorded deed held notice to cotenant of adverse claim. Nichols v. Gaddis & McLaurin, Inc., 222 Miss. 207, 75 So. 2d 625, 1954 Miss. LEXIS 641 (Miss. 1954), overruled, Quates v. Griffin, 239 So. 2d 803, 1970 Miss. LEXIS 1522 (Miss. 1970).

A tenant in common out of possession is entitled to assume that a cotenant in possession holds for all cotenants, until he is given knowledge to the contrary, or the equivalent thereof, which must be shown by clear and convincing evidence. Nichols v. Gaddis & McLaurin, Inc., 222 Miss. 207, 75 So. 2d 625, 1954 Miss. LEXIS 641 (Miss. 1954), overruled, Quates v. Griffin, 239 So. 2d 803, 1970 Miss. LEXIS 1522 (Miss. 1970).

It is not enough that the possession to convey title should be apparently adverse but must be such with actual notice to cotenants or shown by such acts of repudiation of their claim as are equivalent to actual notice. Hurst v. J. M. Griffin & Sons, Inc., 209 Miss. 381, 46 So. 2d 440, 1950 Miss. LEXIS 402 (Miss. 1950).

Silence of cotenants does not estop them from asserting their interest in realty in absence of showing of actual notice of adverse possession and ouster by other cotenant and they would not lose their title by mere abandonment over an extended period. Hurst v. J. M. Griffin & Sons, Inc., 209 Miss. 381, 46 So. 2d 440, 1950 Miss. LEXIS 402 (Miss. 1950).

One claiming entire interest in land under recorded instrument purporting to be deed from her father, and whose brothers and sisters, with knowledge of instrument, allowed her to remain in exclusive possession under claim of title without interference for more than fifteen years, is not required, as tenant in common with brothers and sisters, to give them notice of her exclusive claim in order to acquire title by adverse possession, since brothers and sisters had in fact all the notice that was necessary. McDonald v. Roberson, 204 Miss. 737, 38 So. 2d 189, 1948 Miss. LEXIS 401 (Miss. 1948).

21. — —Ouster.

A managing cotenant, in attempting to claim the interest of other cotenants by adverse possession, has the burden of proving ouster by clear and convincing evidence, since a confidential relationship exists between cotenants, and a cotenant who desires to terminate the relationship has a remedy of partition, or sale for division of proceeds in a proper case, and rather than trying to oust his cotenant and claim adversely, he should deal openly and forthrightly with his cotenants and avail himself of such remedy. Kennedy v. Bryant, 252 So. 2d 784, 1971 Miss. LEXIS 1200 (Miss. 1971).

In establishing that an ouster has occurred between relative cotenants not strangers to the title, followed by the required period of adverse possession, it is not enough to show acts of hostile possession which in other cases might constitute an adverse possession against a stranger, but the possessing cotenant must show actual notice to his cotenant, and the statute of limitations does not begin to run against a cotenant not in possession until the claim of ownership of the other cotenant is brought to his attention. Johnstone v. Johnson, 248 So. 2d 444, 1971 Miss. LEXIS 1470, 1971 Miss. LEXIS 1471 (Miss. 1971).

In an action to establish that an ouster has occurred between cotenants, the activities of the complainant's brother on the property of their father from the time he came into possession, namely creating pasture land, building fences, digging ponds, and changing the course of a creek, were entirely consistent with the occupancy of a cotenant, and were in no sense notice to the complainant of adverse possession. Johnstone v. Johnson, 248 So. 2d 444, 1971 Miss. LEXIS 1470, 1971 Miss. LEXIS 1471 (Miss. 1971).

In an action brought by cotenants to confirm and establish their title to an undivided interest as cotenants in certain land as against claims of the defendant, another cotenant, who had purchased a tax title to the property, the purchasing cotenant could not claim adverse possession as against her cotenants, where there was no ouster of the cotenants such as would give them notice that her claim was adverse to their interest. Gavin v. Hosey, 230 So. 2d 570, 1970 Miss. LEXIS 1556 (Miss. 1970).

Where, in an action to determine title to land, the record failed to show that two of the tenants in common had notice of the defendant cotenant's adverse claims, there was no ouster as to them, and plaintiff, claiming through them, was adjudicated to be vested with their respective interests. 231 Miss. 461, 95 So. 2d 563.

Before cotenant can effect ouster of other cotenants, ouster must have arisen from actual knowledge or by acts equivalent thereto. Hurst v. J. M. Griffin & Sons, Inc., 209 Miss. 381, 46 So. 2d 440, 1950 Miss. LEXIS 402 (Miss. 1950).

Deed from grantor, who had received conveyance of an undivided interest from one of five heirs of original patentee, of his "right, title and interest" was not sufficient assertion of complete title or domination such as to constitute constructive notice or effect an ouster of other heirs. Hurst v. J. M. Griffin & Sons, Inc., 209 Miss. 381, 46 So. 2d 440, 1950 Miss. LEXIS 402 (Miss. 1950).

Silence of cotenants does not estop them from asserting their interest in realty in absence of showing of actual notice of adverse possession and ouster by other cotenant and they would not lose their title by mere abandonment over an extended period. Hurst v. J. M. Griffin & Sons, Inc., 209 Miss. 381, 46 So. 2d 440, 1950 Miss. LEXIS 402 (Miss. 1950).

A recorded deed of conveyance by the purchaser at an invalid foreclosure sale to the mortgagor's widow, along with the widow's subsequent long continued possession, use and improvement of the land for over forty years and the failure of her children as tenants in common to assert any claim after attaining their majority, or to seek any accounting of rents and profits, or a partition for such a long time after their mother ceased to be a widow, constituted an ouster of the children as tenants in common and supported the mother's claim of title by adverse possession. Alewine v. Pitcock, 209 Miss. 362, 47 So. 2d 147, 1950 Miss. LEXIS 400 (Miss. 1950).

Before one tenant in common may claim adverse possession as against his cotenant there must be an ouster of other cotenants such as will afford them notice that his claim is adverse to their interest. Howard v. Wactor, 41 So. 2d 259 (Miss. 1949).

Acts of ownership and continuous adverse possession for more than ten years by purchaser at foreclosure sale during which time purchaser repaired fences, improved houses, built houses, cultivated and used land, and paid taxes, amounted to complete ouster of his alleged cotenants, who, knowing of the foreclosure, moved off premises, and such possession overcame any presumption that title was being held for benefit of cotenants. Jones v. Hoover, 204 Miss. 345, 37 So. 2d 490, 1948 Miss. LEXIS 372 (Miss. 1948).

Mortgage by one tenant in common purporting to convey entire estate does not constitute ouster nor start running of statute against other cotenants, where possession not taken. Scottish-American Mortg. Co. v. Bunckley, 88 Miss. 641, 41 So. 502, 1906 Miss. LEXIS 194 (Miss. 1906).

The statute does not run in favor of a tenant in common until he has actually ousted his co-tenants, or done some act deemed by law equivalent thereto. Bentley v. Callaghan, 79 Miss. 302, 30 So. 709, 1901 Miss. LEXIS 66 (Miss. 1901).

22. — —Significance of recording or filing.

The mere recording alone of a fee simple deed by a cotenant does not impart notice to other cotenants of an adverse claim to land by a cotenant. Nichols v. Gaddis & McLaurin, Inc., 222 Miss. 207, 75 So. 2d 625, 1954 Miss. LEXIS 641 (Miss. 1954), overruled, Quates v. Griffin, 239 So. 2d 803, 1970 Miss. LEXIS 1522 (Miss. 1970).

The mere recording alone of a fee simple deed by a cotenant does not impart notice to other cotenants of an adverse claim to land by a cotenant. Nichols v. Gaddis & McLaurin, Inc., 222 Miss. 207, 75 So. 2d 625, 1954 Miss. LEXIS 641 (Miss. 1954), overruled, Quates v. Griffin, 239 So. 2d 803, 1970 Miss. LEXIS 1522 (Miss. 1970).

Tenant in common cannot acquire title against cotenant without notice; recorded deed held notice to cotenant of adverse claim. Nichols v. Gaddis & McLaurin, Inc., 222 Miss. 207, 75 So. 2d 625, 1954 Miss. LEXIS 641 (Miss. 1954), overruled, Quates v. Griffin, 239 So. 2d 803, 1970 Miss. LEXIS 1522 (Miss. 1970).

One claiming entire interest in land under recorded instrument purporting to be deed from her father, and whose brothers and sisters, with knowledge of instrument, allowed her to remain in exclusive possession under claim of title without interference for more than fifteen years, is not required, as tenant in common with brothers and sisters, to give them notice of her exclusive claim in order to acquire title by adverse possession, since brothers and sisters had in fact all the notice that was necessary. McDonald v. Roberson, 204 Miss. 737, 38 So. 2d 189, 1948 Miss. LEXIS 401 (Miss. 1948).

The fact that the original deed from the tenant in common was not placed on record until long after it was executed and that suit was begun by his cotenants within ten years after date of its filing is immaterial. Eastman, Gardiner & Co. v. Hinton, 86 Miss. 604, 38 So. 779, 1905 Miss. LEXIS 86 (Miss. 1905).

23. — —Particular cases.

Acquisition of one-half interest in property by adverse possession was not established where former wife's occupancy of premises was not exclusive, being shared with husband; interest of former wife in property was at best homestead interest, her legal relationship with husband regarding title being analogous to that of co-tenants, which would have required effective communication of intent and legal ouster of husband from one-half interest in question, neither of which was shown. Davis v. Davis, 508 So. 2d 1062, 1987 Miss. LEXIS 2527 (Miss. 1987).

A son who entered upon land in 1899 after his marriage, and built a home and thereafter exercised every use over the property to which it was susceptible without any protest by either his father or brother during the father's lifetime, possessed the land initially by color of right as a result of a presumptive parol gift from his father, which title ripened in him in 1909 by adverse possession, effectively divesting his father who died in 1912, so that the property in question did not descend to the father's heirs in cotenancy; it is well settled that a claim of title under a parol gift or purchase, accompanied by entry and adverse holding, may ripen into an indefeasible title by the lapse of the statutory period of limitation. Thomas v. Collins, 253 So. 2d 824, 1971 Miss. LEXIS 1229 (Miss. 1971).

The actions of a managing cotenant in paying taxes on the property, having the land surveyed and the lines marked, selling timber therefrom, preventing trespass on the land by adjoining landowners, obtaining the services of the state forestry commission regarding the sale of timber, and improving the timber stand by hiring employees and cutting trees for that purpose, were entirely consistent with the legal right of a cotenant upon the land, and were not sufficient to constitute the equivalent of actual knowledge on the part of the other cotenant, so as to start the running of the statute of limitations for adverse possession against the other cotenant. Kennedy v. Bryant, 252 So. 2d 784, 1971 Miss. LEXIS 1200 (Miss. 1971).

Although a tenant in common, who in an action to determine title to land, asserted an interest of one-eighteenth of the whole tract, was chargeable with knowledge that his cotenants were claiming to be the sole owners, and exercising exclusive management and control over the land, the cotenants failed to acquire title as to the plaintiff by adverse possession. 231 Miss. 461, 95 So. 2d 563.

Even though it was assumed that a lumber company, who acquired a warranty deed to land from the father and brother in which the children had an interest, became a tenant in common with the children, evidence showing that the lumber company upon acquiring the deed went into immediate possession of the land, enclosed it with a fence, had land assessed and paid taxes thereon, had a caretaker to look after it, cut timber thereon, and claimed the land openly as its own, and the children for at least 18 years after they became of age came back and forth to their father's old homestead just across the highway from the land, indicated that the children knew that the lumber company was in actual possession of the land and claiming full title thereto for a longer period than ten years. Avera v. Turner Lumber Co., 230 Miss. 123, 92 So. 2d 458, 1957 Miss. LEXIS 351 (Miss. 1957).

Co-heir's purchase of land at tax sale and possession thereafter exclusively, peaceably, continuously, adversely, and notoriously for a period of 52 years established his title by adverse possession as against other coheirs, and verbal protests and objections by coheirs were insufficient to stop the running of the statute of limitations in his favor. Ferguson v. Chancellor, 206 Miss. 518, 40 So. 2d 275, 1949 Miss. LEXIS 280 (Miss. 1949).

Husband of tenant in common taking possession under void judicial sale and occupying with those under him for 10 years divests title of cotenants. Stewart v. Foxworth, 95 Miss. 442, 52 So. 354, 1909 Miss. LEXIS 311 (Miss. 1909).

Where one tenant in common of land conveyed the whole estate in fee, and the grantee entered, and he and his successors in title held exclusive possession, claiming thereunder the entire estate for more than ten years, the original cotenants not under disability will be barred. Eastman, Gardiner & Co. v. Hinton, 86 Miss. 604, 38 So. 779, 1905 Miss. LEXIS 86 (Miss. 1905).

24. — —Nonresidents.

Nonresident alien mortgagee obtaining possession under invalid sale through tenants, and holding possession and receiving rents for more than 10 years perfects title against mortgagor. Scottish American Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666, 1910 Miss. LEXIS 14 (Miss. 1910).

A nonresident may acquire title by adverse possession held by others for him. Absence from the state does not prevent the running of the statute, since ejectment can be brought against the tenant. Lindenmayer v. Gunst, 70 Miss. 693, 13 So. 252, 1893 Miss. LEXIS 61 (Miss. 1893).

25. Title or interest acquired.

Because the private road in question was surrounded and encompassed by the land owned by the property owners, all that the adverse possessors were entitled to was a prescriptive easement. Buford v. Logue, 832 So. 2d 594, 2002 Miss. App. LEXIS 685 (Miss. Ct. App. 2002).

Code 1942, §§ 709 and 710 are limitation statutes which may be used defensively only, as distinguished from Code 1942, § 711, which provides that 10 years' possession vests full title, and which accordingly may be used affirmatively and defensively. Neal v. Teat, 240 Miss. 35, 126 So. 2d 124, 1961 Miss. LEXIS 423 (Miss. 1961).

The holder of the legal title, on completion of the period of adverse possession, is divested of all right, title and interest in the land, including the right of possession, which rights then become vested in the adverse holder. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72, 1947 Miss. LEXIS 381 (Miss. 1947).

A title gained by adverse possession is a new and complete title, not dependent upon or in any manner derived from, or in privity with, any former owner. Levy v. Campbell, 200 Miss. 721, 28 So. 2d 224, 1946 Miss. LEXIS 340 (Miss. 1946).

Ten years' actual adverse possession under claim of ownership vests title in occupant. Hickingbottom v. Lehman, 124 Miss.

682, 87 So. 149, 1920 Miss. LEXIS 555 (Miss. 1920).

Adverse possession may be used defensively or as basis of bill to confirm title. Fant v. Williams, 118 Miss. 428, 79 So. 343, 1918 Miss. LEXIS 93 (Miss. 1918).

Where intention was to convey fee, but deed conveyed only life estate, grantee entering possession thereunder and holding for 10 years perfected title, parol evidence is admissible to show facts. Breland v. O'Neal, 88 Miss. 449, 40 So. 865, 1906 Miss. LEXIS 141 (Miss. 1906).

A grantor will be barred of all claim to land intended to be, but not actually conveyed, after ten years from the beginning of possession by the grantee. Moore v. Crump, 84 Miss. 612, 37 So. 109, 1904 Miss. LEXIS 86 (Miss. 1904).

On proper application equity will reform such a deed so as to make it convey the land intended to be conveyed. Moore v. Crump, 84 Miss. 612, 37 So. 109, 1904 Miss. LEXIS 86 (Miss. 1904).

And this is true under the general statute of limitation. Jones v. Brandon, 59 Miss. 585, 1882 Miss. LEXIS 167 (Miss. 1882).

The ten years' occupation, as declared in the statute, vests a "full and complete title," upon which the land can be recovered in ejectment, without further evidence than the facts showing such possession. Davis v. Bowmar, 55 Miss. 671, 1878 Miss. LEXIS 29 (Miss. 1878); Ford v. Wilson, 35 Miss. 490, 1858 Miss. LEXIS 50 (Miss. 1858); Ellis v. Murray, 28 Miss. 129, 1854 Miss. LEXIS 159 (Miss. 1854).

26. —Easement.

Because the private road in question was surrounded and encompassed by the land owned by the property owners, all that the adverse possessors were entitled to was a prescriptive easement. Buford v. Logue, 832 So. 2d 594, 2002 Miss. App. LEXIS 685 (Miss. Ct. App. 2002).

Evidence showing that defendant and her predecessors in title had used a strip of land adjoining her lot exclusively for driveway purposes for more than 10 years warranted the granting of an easement for driveway purposes. Patrick v. Myers, 234 Miss. 41, 104 So. 2d 894, 1958 Miss. LEXIS 458 (Miss. 1958).

Easement by prescription may be established by such use as business or pleasure may require and it is not necessary to show that the way has been in constant use, day and night. Browder v. Graham, 204 Miss. 773, 38 So. 2d 188, 1948 Miss. LEXIS 404 (Miss. 1948).

It is not essential to the creation of easement that dominant and servient tenements be adjacent, although an easement requires two distinct tenements, the dominant to which right belongs, and the servient upon which obligation is imposed. Browder v. Graham, 204 Miss. 773, 38 So. 2d 188, 1948 Miss. LEXIS 404 (Miss. 1948).

Use of way over defendant's land, as means of ingress and egress to and from their home, by plaintiff, his predecessors in title, and their families, which continued for more than ten years, ripened into easement by prescription across defendant's land. Browder v. Graham, 204 Miss. 773, 38 So. 2d 188, 1948 Miss. LEXIS 404 (Miss. 1948).

Right by prescription, growing out of use of way for more than ten years by plaintiff and his predecessors in title, to continue to use way is established by evidence that way was outlet to school, church and public road, its use was by car, by truck, by wagon and on foot as business or pleasure might direct, and that road was fairly well defined and continued in same location for more than ten years, except for occasional slight diversion because of some obstruction. Browder v. Graham, 204 Miss. 773, 38 So. 2d 188, 1948 Miss. LEXIS 404 (Miss. 1948).

Public user, and working and maintaining of roadway traversing defendants' land by public authorities at public expense for 17 years, without objection of defendants, was sufficient to put landowners on notice that public authorities were asserting the right to deal with the road as part of the road system of the district, and to establish an easement for public road purposes by prescription through adverse user for the period prescribed by law, so as to preclude defendants' right to obstruct such road. Armstrong v. Itawamba County, 195 Miss. 802, 16 So. 2d 752, 1944 Miss. LEXIS 335 (Miss. 1944).

City maintaining drain ditch for more than 10 years acquired right to maintain it but not to enlarge it or increase water flow. Sturges v. Meridian, 95 Miss. 35, 48 So. 620, 1909 Miss. LEXIS 229 (Miss. 1909).

Proprietor of land cannot claim easement by prescription in neighborhood road where his actions have been inconsistent with such a claim. Wills v. Reid, 86 Miss. 446, 38 So. 793, 1905 Miss. LEXIS 91 (Miss. 1905).

Public does not acquire rights by prescription in neighborhood road over which it has exercised no supervision and to which it has asserted no claim. Wills v. Reid, 86 Miss. 446, 38 So. 793, 1905 Miss. LEXIS 91 (Miss. 1905).

Title to a right of way may be acquired by prescription by ten years' adverse occupancy, but the use must be claimed under color of right and must be such as to expose the party asserting it to an action if he wrongfully exercised it. Board of Sup'rs. v. Mastronardi, 76 Miss. 273, 24 So. 199 (Miss. 1898).

Ten years is the time in this state by which to acquire an easement in land. Alcorn v. Sadler, 71 Miss. 634, 14 So. 444, 1893 Miss. LEXIS 134 (Miss. 1893).

27. — — Predecessors in interest.

Remand in an action for encroachment and adverse possession was appropriate because the chancellor erred in failing to determine whether the evidence established that the predecessors in title adversely possessed the portions of the lot that included the areas in question: the parking lot, the fence, the shed, and the floor, which were not built until 2002. Jordan v. Fountain, 986 So. 2d 1018, 2008 Miss. App. LEXIS 14 (Miss. Ct. App.), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 380 (Miss. 2008).

28. Running of limitation period.

Property owners' adverse possession claim failed because the owners were bound by the doctrine of collateral estoppel to the determination in a prior lawsuit that the subject property was a public road and that the county board of supervisors had not abandoned it. Furthermore, after the board of supervisors subsequently abandoned the road, less than the required 10 years ran before the owners brought their adverse possession claim. Smith v. Sims, — So. 3d —, 2019 Miss. App. LEXIS 234 (Miss. Ct. App. May 28, 2019).

Subsequent grantees were entitled to summary judgment on the grantor's claim of adverse possession because the grantor failed to present evidence to create a genuine issue of material fact as to whether the grantor adversely possessed or occupied the subject parcels of land continuously and uninterrupted for a period of ten years. Dorman v. Power, 203 So. 3d 33, 2016 Miss. App. LEXIS 662 (Miss. Ct. App. 2016).

In addition to satisfying the other elements for adverse possession, a neighbor was in possession of the disputed property for at least ten years because the neighbor began possessing the disputed 7.79 acres in 1988 when it purchased 482 acres from the previous owner and began conducting various activities as if it rightfully owned the 7.79 acres until 2007, when the abutting landowners erected a fence. Roberts v. Young's Creek Inv., Inc., 118 So. 3d 665, 2013 Miss. App. LEXIS 411 (Miss. Ct. App. 2013).

In property owners' suit against their neighbors seeking to enjoin them from their adverse use of a common easement, the neighbors' prior conveyance of a specifically described easement interrupted the adverse possession as it ended the claim of right as to the entirety of the easement strip. The fact that the neighbors continued in possession at best meant that a new period of possession had commenced; that period did not continue for 10 years. Tucker v. Long, 873 So. 2d 1064, 2004 Miss. App. LEXIS 446 (Miss. Ct. App. 2004).

Where a person is in adverse possession of lands and the mineral estate has not been severed from the surface estate, and the legal owner of the land attempts to convey the mineral estate, the adverse possession will continue as if there had been no conveyance of the mineral estate. Huddleston v. Peel, 238 Miss. 798, 119 So. 2d 921, 1960 Miss. LEXIS 465 (Miss. 1960).

Statute held to bar suit to remove an alleged cloud on title, a deed executed upon a sale for purposes of partition some forty years before, on ground that all parties in interest were not served and that land not shown therein to be incapable of partition in kind. Hollingsworth v. Central Oil Co., 236 Miss. 779, 112 So. 2d 518, 1959 Miss. LEXIS 376 (Miss. 1959).

Continued adverse possession provided by this section [Code 1942, § 711] does not begin to run against minors until the disability of minority has been removed. 231 Miss. 461, 95 So. 2d 563.

This section [Code 1942, § 711] has no application to a tax title claim by one cotenant against another, but cotenant must rely upon the ten-year adverse possessory statute. Wall v. Wall, 220 Miss. 642, 71 So. 2d 308, 1954 Miss. LEXIS 480 (Miss. 1954).

Where there was a suit to cancel and remove some alleged clouds from the title of property which was sold under a bond mortgage to satisfy an indebtedness owing to a Louisiana corporation, in liquidation, the fact that the suit was filed just two days before the completion of the bar of ten-year statute of limitations, should not bar the action because of laches. Enochs v. Mississippi Tower Bldg., Inc., 210 Miss. 676, 50 So. 2d 551, 1951 Miss. LEXIS 307 (Miss. 1951).

Where a dispute over a piece of land arose out of two overlapping deeds, conversations and expressions of good will and recognition of one another's deeds by neighbors does not toll the statute of limitations and estop the assertion of title by adverse possession. Lott v. Sebren, 210 Miss. 99, 48 So. 2d 626, 1950 Miss. LEXIS 326 (Miss. 1950).

Where there was privity between appellees and their predecessor in title, appellees are entitled to tack their possession to that of their predecessor and to acquire title by adverse possession to small strip of land between an old fence line and the true boundary line although appellees were not themselves in possession for ten years. Ricketts v. Simmons, 44 So. 2d 537 (Miss. 1950).

Tax title purchaser claiming ten years' adverse possession between April 7, 1930, and June 12, 1945, who leased land for oil and gas in 1940, whose claim to land was open and notorious in community, who rented land to various tenants from 1935 to 1948, with exception of period from 1938 to 1943, there being breaks in occupancy of land between tenants who cultivated small patches of open land, and who did not improve land, fence it or cut timber, failed to show continuous use of land for statutory period required. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

Regardless of extent and quality of adverse possession, its period is tolled by sale of the land to State for taxes, and adverse possessor is remanded to period following sale to State on which to build up his prescriptive title. Winstead v. Winstead, 204 Miss. 787, 38 So. 2d 118, 1948 Miss. LEXIS 406 (Miss. 1948).

Title to land by adverse possession cannot be established in 1947, by tax receipts dated from 1931 to and including 1947 containing description of land, when land was sold to State for 1932 taxes and State issued patent to land in 1941 to purchaser other than individual claiming by adverse possession. Winstead v. Winstead, 204 Miss. 787, 38 So. 2d 118, 1948 Miss. LEXIS 406 (Miss. 1948).

Allegations that holder of third deed of trust on lands agreed to purchase land "for owners" on foreclosure of first deed of trust, that land was purchased in name of his wife and conveyed to wife of cotenant who executed three deeds of trust covering purchase price, all of which conveyances were recorded, are insufficient to show a fraudulent concealment such as to prevent running of statute of limitations in favor of holder of original third deed of trust who purchased property on foreclosure of last deed of trust. Jones v. Hoover, 204 Miss. 345, 37 So. 2d 490, 1948 Miss. LEXIS 372 (Miss. 1948).

Continuity of adverse possession is not interrupted by void sale for delinquent taxes. Downing v. Starnes, 35 So. 2d 536 (Miss. 1948).

Where the title of the State to tax forfeited land had matured for failure to redeem, the statute of limitations could not again begin to run until the land became the subject of private ownership. Cotten v. Cotten, 203 Miss. 316, 35 So. 2d 61, 1948 Miss. LEXIS 271 (Miss. 1948).

The execution and recording of a warranty deed by several cotenants of land to a stranger to the title set in motion an adverse claim against a cotenant who had not signed the deed, which was thereupon made available to the grantee, who, by implementing such claim by adverse possession through himself and his successors in title for a period beyond the statutory limitation, matured the disseisin into complete ownership. Davis v. Gulf Refining Co., 202 Miss. 808, 32 So. 2d 133, 1947 Miss. LEXIS 344 (Miss. 1947).

The filing of a bill by the record owner of land to remove defendant's claim as a cloud upon its title, wherein defendant by cross bill asserted title thereto by adverse possession, stopped the running of the ten-year period necessary to acquire title by adverse possession. Southern Naval Stores Co. v. Price, 202 Miss. 116, 30 So. 2d 505, 1947 Miss. LEXIS 248 (Miss. 1947).

The statute of limitations once put in operation is not tolled by the death of the owner. Leggett v. Norman, 192 Miss. 494, 6 So. 2d 578, 1942 Miss. LEXIS 40 (Miss. 1942).

In an action to confirm title and remove cloud, as against defendants' claim of adverse possession and that the period of adverse possession was not interrupted by a decree in a former suit to which the defendants were made parties for confirmation of complainant's tax title on the ground that the issue of adverse possession was not involved in the former suit, allegations in the former suit that the complainant was in possession and that there was no adverse possession, with defendants' allegations to the contrary, put the claim of adverse possession in issue, and such issue was concluded by the decree in the former suit foreclosing further inquiry. Norton v. Graham, 185 Miss. 164, 187 So. 510, 1939 Miss. LEXIS 136 (Miss. 1939).

Where the owner of certain lots mortgaged one of them to the plaintiff and thereafter conveyed the other lot and a part of the mortgaged lot to the defendant, a period of adverse possession as to the part of the mortgaged lot conveyed and in dispute did not begin until after the foreclosure and purchase thereunder by the plaintiff, so that defendant did not obtain title by adverse possession to such disputed piece of land where less than ten years had elapsed from the mortgagee's purchase until he filed his bill to confirm and quiet title, notwithstanding that the defendant had been in possession thereof for more than ten years. Seymour v. Lamb, 185 Miss. 37, 185 So. 824, 1939 Miss. LEXIS 113 (Miss. 1939).

Statute begins to run at end of redemption period, where owner retains possession. Carraway v. Lockard, 150 Miss. 704, 116 So. 599, 1928 Miss. LEXIS 130 (Miss. 1928).

Permissive holding should be deducted in computing adverse possession. Meyer v. Sea Food Co., 136 Miss. 868, 101 So. 702, 1924 Miss. LEXIS 173 (Miss. 1924).

Adverse possession by a tenant runs from the time the landlord receives notice that the occupancy is hostile; and a tenant is not required to yield possession and again enter the premises before the statute will run in his favor. Greenwood v. Moore, 79 Miss. 201, 30 So. 609, 1901 Miss. LEXIS 39 (Miss. 1901).

An action of ejectment to recover lands conveyed by a wife under duress is not barred if begun within ten years after the duress ceases to be operative. Allen v. Leflore County, 78 Miss. 671, 29 So. 161, 1900 Miss. LEXIS 136 (Miss. 1900).

It is only where a right of action accrues in this state and the person liable goes to reside elsewhere that the period of absence is not to be counted. Lindenmayer v. Gunst, 70 Miss. 693, 13 So. 252, 1893 Miss. LEXIS 61 (Miss. 1893).

29. Evidence, generally.

Where a grantor claims by adverse possession all or part of the property conveyed, proof of actual notice of that possession by the grantor to the grantee should be stronger than in the normal adverse possession case and should be clear beyond a reasonable doubt; the evidence should reveal that the grantee has been ousted from the property he received under the conveyance. Skelton v. Lewis, 453 So. 2d 703, 1984 Miss. LEXIS 1817 (Miss. 1984).

In boundary line dispute, evidence supported finding that location of line as found by court-appointed surveyor was true line and that an old fence line had not been recognized by the parties as the boundary so as to give defendants title by adverse possession to land between surveyed line and old fence line. Jenkins v. Thweatt, 42 So. 2d 95 (Miss. 1949).

As between parties sustaining parental and filial relations, possession of land of one by other is presumptively permissive or amicable, but this presumption is not conclusive and when facts are in evidence presumptions must disappear and yield to facts. Randall v. Mitchell, 41 So. 2d 44 (Miss. 1949).

Presumption that as between parties sustaining parental and filial relations, possession of land of one by other is permissive or amicable is not sufficient to overthrow direct and positive evidence that mother's possession of daughter's land was actual, open, notorious, exclusive, hostile, undisputed and under claim and honest belief of ownership continuous and uninterrupted for period of about eighteen years before she sold it; and purchaser is entitled to tack his possession onto that of the mother. Randall v. Mitchell, 41 So. 2d 44 (Miss. 1949).

Proof of ten years' actual possession under claim of ownership will prima facie defeat recovery in ejectment on a tax title executed and operative more than ten years prior to the suit, since the possession and claim will be presumed to have been adverse to the tax deed. Graham v. Warren, 81 Miss. 330, 33 So. 71, 1902 Miss. LEXIS 150 (Miss. 1902).

30. —Deed.

Chancellor's order confirming and quieting title in landowner was proper where landowner's mother had claimed disputed property from 1945 until she deeded it to landowner in 1973; use of this property was exclusive and peaceful, continuous for 41 years, actual, open, and notorious, and under claim of right; evidence showed that disputed property was under fence for purpose of grazing cows from 1942 until mid-1960's, and fence remained in repair well enough to keep cattle until at least 1972; it does not matter whether land claimed under adverse possession is within "call of the title deeds," or is in same quarter section or section as land lies which is described in deed; since requirements of adverse possession had been established by fence around disputed property and continued use of property for more than 40 years, once title ripened by adverse possession it was not necessary that fence be standing, or even in existence, when suit was filed. Pieper v. Pontiff, 513 So. 2d 591, 1987 Miss. LEXIS 2832 (Miss. 1987).

Evidence showing that complainants entered into possession of parcel of land in 1942, under color of title by virtue of deed executed to them by a bank, and that complainants remained in possession of the land, claiming it as their own, and exercised acts of ownership on the land by cutting timber and pasturing cattle on the land, keeping the fences in state of repair, and paying taxes on the land for a period of 19 years, established complainants' title by adverse possession. Bickham v. Bates, 246 Miss. 171, 150 So. 2d 138, 1963 Miss. LEXIS 433 (Miss. 1963).

Church, claiming under prior recorded deed which properly described the land therein by metes and bounds although reference to total acreage was erroneous, was entitled to have its title quieted thereto as against defendants claiming under a subsequent conveyance of the remainder of the quarter section from the same grantor, since defendants acquired no semblance or color of title to the church's realty under the latter conveyance, and their plea of adverse possession was not sustained by proof that they claimed some of the land and that each of them pastured a cow thereon for as long as ten consecutive years. Miles v. Collinsville Methodist Church, 46 So. 2d 110 (Miss. 1950).

Proof of possession for 50 years and perfect chain of title back to uncle of patentee in 1861 raises presumption of lost deed from patentee to uncle. Scarborough v. Native Lumber Co., 118 Miss. 138, 79 So. 84, 1918 Miss. LEXIS 64 (Miss. 1918).

31. —Parol evidence.

Where intention was to convey fee, but deed conveyed only a life estate, grantee entering possession thereunder, and holding for 10 years perfected title, and parol evidence is admissible to show the facts.

Breland v. O'Neal, 88 Miss. 449, 40 So. 865, 1906 Miss. LEXIS 141 (Miss. 1906).

32. —Burden of proof.

Chancellor properly denied plaintiffs' claim against defendants for adverse possession under Miss. Code Ann. § 15-1-13(1) because plaintiffs failed to show by clear and convincing evidence that all of the elements of adverse possession were met; the meager testimony created some confusion as to whether plaintiffs were discussing the full 120 acres of land owned by the parties or half of the acreage. Frazier v. Frazier, 31 So. 3d 1218, 2009 Miss. App. LEXIS 251 (Miss. Ct. App. 2009), cert. denied, 31 So. 3d 1217, 2010 Miss. LEXIS 177 (Miss. 2010).

To establish the exclusivity element of its claim of adverse possession of the road, business had to show its conduct afforded an unequivocal indication that it exercised dominion of a sole owner, not that it excluded others from use of the road. Lynn v. Soterra Inc., 802 So. 2d 162, 2001 Miss. App. LEXIS 525 (Miss. Ct. App. 2001).

In a case involving a claim of adverse possession where the party holds the property with co-tenants, the burden of proof is even greater. Bacot v. Duby, 724 So. 2d 410, 1998 Miss. App. LEXIS 954 (Miss. Ct. App. 1998).

Where persons claiming possession of land for more than 10 years admitted that complainants owned the record title to the property, the burden of proof was upon them to establish that they had obtained title by adverse possession, and they must show that the possession was adverse under a claim on right or ownership. Ford v. Rhymes, 233 Miss. 651, 103 So. 2d 363, 1958 Miss. LEXIS 427 (Miss. 1958).

Burden of proof is upon adverse claimant to establish by competent evidence what particular area was used, cultivated, fenced, or actually occupied by him and where such areas were located on the tract, and to do this in such a way as to enable the court to determine its location and in its decree establish the area to which title has ripened by adverse possession. Page v. O'Neal, 207 Miss. 350, 42 So. 2d 391, 1949 Miss. LEXIS 347 (Miss. 1949).

Burden of proving continuous adverse possession for statutory period is on parties claiming title by adverse possession. Heidelberg v. Duckworth, 206 Miss. 388, 40 So. 2d 179, 1949 Miss. LEXIS 269 (Miss. 1949).

The burden is upon the former owner of land to which title has been gained by adverse possession, or any person claiming under him, who has anything to present as an exception or reservation. Levy v. Campbell, 200 Miss. 721, 28 So. 2d 224, 1946 Miss. LEXIS 340 (Miss. 1946).

33. —Particular cases, evidence sufficient.

Neighbors did not adversely acquire a narrow strip of owners' adjoining property by adverse possession because the chancellor found that one of the owners gave the neighbors permission to use the strip of property. Furthermore, the neighbors' occupation was temporary and limited, the owners paid taxes on the property, both parties accessed and used the property, and the owners removed a damaged chain link fence and kept their side of the fence cut. Winters v. Billings, — So. 3d —, 2019 Miss. App. LEXIS 16 (Miss. Ct. App. Jan. 15, 2019).

Once the appellee property owner satisfied the elements of adverse possession under Miss. Code Ann. § 15-1-13(1), title to the disputed parcel vested in him and in order for the appellant property owner to have established a superior claim to the disputed parcel, she would have had to have met all six of the elements of adverse possession by clear and convincing proof, which she failed to do. There simply was no necessity to reactivate appellee's adverse-possession claim after the survey or the execution of the lease. Conliff v. Hudson, 60 So. 3d 203, 2011 Miss. App. LEXIS 194 (Miss. Ct. App. 2011).

Finding that the appellee property owners adversely possessed the property at issue was appropriate under Miss. Code Ann. § 15-1-13(1) because they met all the required elements of adverse possession as to the property at issue. appellees built their home on the property, they occupied it for over 10 years, and they had even conveyed two other parcels located on the property; those actions were sufficient to give notice to the world that they were claiming the land as their own. Pulliam v. Bowen, 54 So. 3d 331, 2011 Miss. App. LEXIS 88 (Miss. Ct. App. 2011).

In an action to quiet title on the basis of adverse possession, where the evidence established that plaintiffs' predecessor in title had continuously used a field road until defendants placed a blockade on the road claiming ownership but where, prior to this assertion of ownership, the predecessor had continuously used the road uninterrupted for approximately 50 years, the evidence supported a conclusion that plaintiffs and their predecessor had used the field road far in excess of the 10-year statutory requirement. Hill v. Johnson, 27 So. 3d 426, 2009 Miss. App. LEXIS 448 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 63 (Miss. 2010).

Finding that plaintiffs proved the elements of adverse possession, Miss. Code Ann. § 15-1-13, was affirmed, as there was substantial evidence to support the finding; for example, as to actual and hostile possession, plaintiffs testified that they had performed such activities as mowing, clearing snakes, and clearing underbrush of the property at issue. Sturdivant v. Todd, 956 So. 2d 977, 2007 Miss. App. LEXIS 55 (Miss. Ct. App. 2007).

Prescriptive easement was properly granted to an owner where he showed that a predecessor in interest had used a driveway for ingress and egress under claim of ownership, with actual possession, openly and notoriously, continuously and uninterrupted for more than 10 years, pursuant to Miss. Code Ann. § 15-1-13. Arrechea Family Trust v. Adams, 960 So. 2d 501, 2006 Miss. App. LEXIS 784 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 412 (Miss. 2007).

Landowner, at the behest of its predecessor, was cutting timber on the disputed strip as early as 1987, and the rule of "tacking" as applied to adverse possession clearly allowed the time period the property was adversely possessed by the predecessor to combine with the time it was adversely possessed by the landowner in order to meet the statutory time period, as the parties were in privity; because there was evidence that the neighbors were aware of adverse activity on the disputed land as early as 1987, there was sufficiently substantial evidence to support the chancellor's finding of satisfaction of the time period element of Miss. Code Ann. § 15-1-13(1). McLendon v. Copiah Forest Prods., 926 So. 2d 260, 2006 Miss. App. LEXIS 262 (Miss. Ct. App. 2006).

Chancellor did not abuse her discretion in determining that the trustee had established adverse possession to disputed property where the trustee had inspected the property twice a year and painted the boundary lines on the disputed property the same way he painted the boundary lines on his other property and the neighbors did not offer proof that they had ever maintained any lines between their property and that of the trustee. Jackson v. Peoples Bank & Trust Co., 869 So. 2d 422, 2004 Miss. App. LEXIS 206 (Miss. Ct. App. 2004).

The evidence was sufficient to support the plaintiffs' claim of adverse possession where the adverse owners' family came into the property in dispute more than fifty years earlier, all witnesses at trial testified that the adverse owners had exclusive use of the property during that entire time, that they worked and played on the land, often inviting others to farm the land or cut hay there and the fact that the use of the land was not permissive was established by the testimony of the abutting owners, who both testified that neither had given the adverse owners permission to use the property. Magee v. Garland, 799 So. 2d 154, 2001 Miss. App. LEXIS 414 (Miss. Ct. App. 2001).

Evidence was sufficient to establish adverse possession where the land was used under claim of ownership and was actual or hostile; use of the land was quite open, notorious and visible as a fence was erected and the land was used for gardening and other visible operations; such activities continued for a continuous period long over the 10 year minimum; such uses were exclusive in that only the plaintiff's family gained advantage from the land; and such occupation was peaceful during this time, drawing no objection from the defendant's family. Cheatham v. Stokes, 760 So. 2d 795, 2000 Miss. App. LEXIS 91 (Miss. Ct. App. 2000).

Evidence was sufficient to require the court to consider the defendant's claim of adverse possession where (1) defendant built a driveway on the disputed property for her family's private and personal use, fully believing that it was on her property, (2) the driveway was clearly visible, and (3) the driveway had been in essentially the same place and had been used peacefully for 20 years or more. Simmons v. Cleveland, 749 So. 2d 192, 1999 Miss. App. LEXIS 490 (Miss. Ct. App. 1999).

Evidence established adverse possession of property along the boundary of the parties' properties, notwithstanding the contention that the boundary between the parties' lands had been in dispute since the early 1960's, where the appellees maintained a fence surrounding the disputed land for over 40 years and held that land in their exclusive peaceful possession from the mid-1960's until approximately 1992. Murray v. McRae, 741 So. 2d 1009, 1999 Miss. App. LEXIS 365 (Miss. Ct. App. 1999).

Adverse possession was established by evidence that possessors cleared land and planted grass, grazed cattle on land, repaired damage caused by hurricane, built and repaired fish pond, paid taxes in all but 2 years, frequently visited property, and made other improvements; titleholder's nonpayment of taxes coupled with awareness that grass was planted and cattle were grazed on pastures gave rise to notice of adverse claim. Ramsey v. Copiah Bank, N.A., 678 So. 2d 637, 1996 Miss. LEXIS 208 (Miss. 1996).

Evidence that a landowner's predecessor in title maintained a fence which encroached upon an adjoining lot between 6 ½ and 7 feet for a 25-year period, that the predecessor used the yard up to the fence and regarded it as her own, and that the adjoining landowner's predecessors in title likewise recognized the fence line as the property line throughout the 25 years, was sufficient to establish adverse possession of the property. Stallings v. Bailey, 558 So. 2d 858, 1990 Miss. LEXIS 157 (Miss. 1990).

Claim of adverse possession to wild, undeveloped accretion property on southern tip of island owned by claimants but within northern boundary of contestant's plantation was established where the possessory acts of the claimants in planting tree sprigs and seedlings, granting oil, gas and mineral leases, issuing grazing and hunting leases, and personally hunting on the land each year constituted sufficient control and possession given the character of the property as unsuitable for habitation, cultivation or permanent useful improvement; exemption from requirement of open and notorious possession was established by actual notice of adverse claim given to contestant over 20 years prior to commencement of the action. Houston v. United States Gypsum Co., 652 F.2d 467, 1981 U.S. App. LEXIS 10834 (5th Cir. Miss. 1981).

Where adverse claimants placed a "brushed out" line on appellant's land, posted signs at road entrances, annually grazed cattle thereon, and advised appellants in writing that they claimed lands in dispute, and appellant's only action was to paint a so-called line which he considered to be the true line, the chancellor was warranted in determining that the adverse claimants had acquired title to the disputed area. Kayser v. Dixon, 309 So. 2d 526, 1975 Miss. LEXIS 1883 (Miss. 1975).

In an action to establish the correct lines to a residence lot, the chancellor's finding, under conflicting evidence, that the lot owner and his predecessors in title had acquired title to the disputed strip of land by more than 30 years adverse possession, was affirmed. Myers v. Orr, 233 Miss. 498, 102 So. 2d 674, 1958 Miss. LEXIS 408 (Miss. 1958).

Evidence that school trustees and their predecessors in office were in actual adverse possession for more than ten years of a strip of land adjoining that deeded to them for so long as it should be used for school purposes sustained their claim of ownership thereof by adverse possession subject to the limitations prescribed in the deed. Kelly v. Wilson, 204 Miss. 56, 36 So. 2d 817, 1948 Miss. LEXIS 342 (Miss. 1948).

Agreement to convey land upon payment of sum in addition to payment disclosed by receipt for part of purchase money, followed by continuous occupancy and use of land for at least forty-four years, raises presumption that remainder of purchase price was paid and conveyance in fact executed, in the absence of any showing to the contrary. Rosenbaum

v. Bohannon, 204 Miss. 9, 36 So. 2d 798, 1948 Miss. LEXIS 338 (Miss. 1948).

In the absence of an order of the board of supervisors, or other record evidence showing that the roadway had been designated as a public road, public user and working and maintaining of roadway across defendants' land by public authorities at public expense for 17 years, without objection of defendants was sufficient to put them on notice that public authorities were asserting a right to deal with the road as part of the road system in the district, and to establish an easement for public road purposes by prescription to adverse user for the period prescribed by law, so as to preclude defendants from placing gates across or otherwise obstructing such road. Armstrong v. Itawamba County, 195 Miss. 802, 16 So. 2d 752, 1944 Miss. LEXIS 335 (Miss. 1944).

Description of road across defendants' land in action to enjoin defendants from obstructing such road, designating the road to be "as it now runs across the lands of the defendants," the proof showing without substantial conflict that it now runs along the same location where it had been traveled and used for more than 50 years, and stating the point of beginning, the direction of its course, and its terminus at a point on another public road therein named, at or near a certain residence, was a sufficient description of such road to show its location. Armstrong v. Itawamba County, 195 Miss. 802, 16 So. 2d 752, 1944 Miss. LEXIS 335 (Miss. 1944).

Although evidence was conflicting as to whether fence enclosing land adversely claimed was continuously kept up by repairs in such condition as to exclude cattle, it was sufficient to show that fence was amply sufficient during a continuous period of ten years to fly the flag over the land and put the true owner on notice that the land within the fence was being held under an adverse claim of ownership, and when taken in connection with other facts, title by adverse possession was substantiated. Snowden & McSweeny Co. v. Hanley, 195 Miss. 682, 16 So. 2d 24, 1943 Miss. LEXIS 176 (Miss. 1943).

Showing that land was deeded to one or two remote grantors in 1891 and continuous possession had since under claim of ownership with complainant's acquiescence, established title. Hammond v. Cowart, 52 So. 451 (Miss. 1910).

34. — —Evidence insufficient.

Tax sale purchaser did not prove adverse possession of the subject land because clear and convincing evidence did not show (1) actual or hostile possession by acts to control the property's use, (2) open, notorious, and visible occupation sufficient to give the true owner notice, (3) continuous and uninterrupted occupation for ten years when both the purchaser and the true owner claimed to have been on the property regularly, or (4) absence of a breach of the peace. Orcutt v. Chambliss, 243 So. 3d 757, 2018 Miss. App. LEXIS 23 (Miss. Ct. App. 2018).

Property owner failed to establish, by clear and convincing evidence, each element of his adverse-possession claim because a road was not as obvious as represented in photographs, a "mud pit" had not come into being until after 2006, and the original complaint was filed in 2013, within the prescribed ten-year statutory period to claim adverse possession; though ATV use had been visible, continuous, and uninterrupted, it had not been present for the requisite ten years prescribed by statute. O'Neal v. Blalock, 220 So. 3d 234, 2017 Miss. App. LEXIS 240 (Miss. Ct. App. 2017).

Clear and convincing evidence did not show alleged adverse possessors met requirements to establish adverse possession because the credible evidence showed (1) the alleged possessors did not regularly visit or use the property, (2) the possessors' use of a house on the property, when living in the house, was sporadic, (3) the possessors' use of the property for recreation or rental purposes was not exclusive, (4) the possessors did not show the possessors' family's hostile possession of the property, (5) testimony was conflicting on the open, notorious, and visible element, and (6) there was no evidence the possessors lived on the property for ten consecutive years. Rester v. Greenleaf Res., Inc., 198 So. 3d 472, 2016 Miss. App. LEXIS 506 (Miss. Ct. App. 2016).

Judgment finding that plaintiffs failed to sustain their claim that they had adversely possessed two sections of property was affirmed where (1) simply because plaintiffs purchased property in 1991 did not automatically mean that they held property other than that which was described in the 1991 deed under a claim of ownership; and (2) the mere existence of a fence near the actual boundary line did not establish that the fence was the accepted boundary between the properties. Niebanck v. Block, 35 So. 3d 1260, 2010 Miss. App. LEXIS 265 (Miss. Ct. App. 2010).

In their appeal, appellees argued that they had adversely possessed parcel 2B even though they held title to parcel 2B; there was no specific testimony regarding appellants' attempt to adversely possess this parcel, and thus the court reversed the determination and rendered judgment to show that appellees were the record titleholders of parcel 2B. Nelson v. Bonner, 13 So. 3d 880, 2009 Miss. App. LEXIS 466 (Miss. Ct. App. 2009).

Testimony presented established appellees' ownership of the area near one of appellant's mobile home, but there was no clear and convincing evidence that parcel 2A was adversely possessed by appellees under Miss. Code Ann. § 15-1-13(1). Nelson v. Bonner, 13 So. 3d 880, 2009 Miss. App. LEXIS 466 (Miss. Ct. App. 2009).

Neighbor whose land abutted a church's land failed to show that its possession of the land by allowing its lessee's cows to graze there was hostile or adverse to the church's interest as required by Miss. Code Ann. § 15-1-13, because the neighbor did nothing to eject the church or its surveyors and took no other hostile action. Double J Farmlands, Inc. v. Paradise Baptist Church, 999 So. 2d 826, 2008 Miss. LEXIS 591 (Miss. 2008).

Appellants failed to meet their burden to establish title by adverse possession under Miss. Code Ann. § 15-1-13 of adjacent property because there was substantial credible evidence that appellants' use of the disputed property was not exclusive in that both appellants and the claimants had used the property during the 10-year period. Riverland Plantation P'ship v. Klingler, 942 So. 2d 294, 2006 Miss. App. LEXIS 848 (Miss. Ct. App. 2006).

Denial of an adverse possession claim was affirmed because appearing occasionally to inspect the land and allowing a fence to fall into disrepair were insufficient for adverse possession under Miss. Code Ann. § 15-1-13. Askew v. Reed, 910 So. 2d 1241, 2005 Miss. App. LEXIS 618 (Miss. Ct. App. 2005).

Neighbor failed to establish any of the elements of adverse possession under Miss. Code Ann. § 15-1-13 with regard to the land parcel at issue, where the owner of the parcel had permitted the neighbor's predecessor to build a road on the parcel, the owner had prohibited the neighbor's loggers from removing trees from the parcel, and the owner tore down a new fence that was built by the neighbor on the parcel to replace an old fence that was near the boundary line between the properties. Scrivener v. Johnson, 861 So. 2d 1057, 2003 Miss. App. LEXIS 1196 (Miss. Ct. App. 2003).

Where the neighbor cited Miss. Code Ann. § 95-5-10 as authority for the argument that any person who took a tree without the consent of the owner was liable in the amount double the fair market value of the tree, the neighbor was not entitled to such damages from the owner; the neighbor was not the owner of the parcel at issue, because the neighbor's adverse possession claim under Miss. Code Ann. § 15-1-13 failed. Scrivener v. Johnson, 861 So. 2d 1057, 2003 Miss. App. LEXIS 1196 (Miss. Ct. App. 2003).

Appellants did not point to any specific acts by them or their predecessors in title which would satisfy the requirements for adverse possession of disputed property after the change in a river's channel, especially as the disputed property was assessed to the appellee and it had consistently paid the taxes. Cox v. F-S Prestress, Inc., 1999 Miss. App. LEXIS 719 (Miss. Ct. App. July 20, 1999).

The plaintiff was not entitled to a prescriptive easement where her use of a road across the defendants' property was permissive and remained so until the defendants informed her that she would no longer be allowed to use the easement. Sharp v. White, 749 So. 2d 41, 1999 Miss. LEXIS 272 (Miss. 1999).

Evidence was insufficient to establish plaintiff's adverse possession based on the location of a fence erected many years earlier since (1) the plaintiff failed to put the defendant on notice that she claimed ownership of the tract of land, and (2) the defendant had allowed the plaintiff's predecessor-in-title to erect the fence east of the disputed property and on his own land. Stringer v. Robinson, 760 So. 2d 6, 1999 Miss. App. LEXIS 500 (Miss. Ct. App. 1999).

Evidence was insufficient to show adverse possession of property extending the edge of a ditch which was wholly within the plaintiff's property where the defendant's claim of possession was based on his storage of junk cars and his occasional parking of trucks on the property, his mowing and gardening of the property, the plaintiff took immediate action against the defendant when the latter moved three houses onto the property. Walker v. Murphree, 722 So. 2d 1277, 1998 Miss. App. LEXIS 917 (Miss. Ct. App. 1998).

A chancellor committed manifest error by concluding that a county had acquired a public easement by prescription across a private road under § 15-1-13 where there was no record of any official action taken by the county board of supervisors to make the road public, and, though individual members of the board of supervisors were permitted to testify as to whether the road was private or public, no board minutes were offered into evidence. Myers v. Blair, 611 So. 2d 969, 1992 Miss. LEXIS 838 (Miss. 1992).

The evidence was insufficient to support a finding of ownership of land by adverse possession, even though the alleged adverse possessor claimed that he had stored "junk" consisting of a washing machine, tractor and tractor parts, on the land in question for well over 10 years, where the landowner strongly objected to a fence as soon as it was erected by the alleged adverse possessor. Rawls v. Parker, 602 So. 2d 1164, 1992 Miss. LEXIS 316 (Miss. 1992).

A claimant failed to establish a prima facie case of adverse possession of wild swamp land where no surveys were run, no posted signs were put up, no fences were constructed, no timber was cut, no taxes were paid on the property by the claimants, no written documents describing the property were ever recorded, and the only evidence of possession was that the claimant walked on the land "several times." Holliman v. Charles L. Cherry & Assoc., Inc., 569 So. 2d 1139, 1990 Miss. LEXIS 204 (Miss. 1990).

Evidence of old barbed wire fence which adverse claimant claims to have helped grandfather patch and repair but which claimant concedes has subsequently fallen into state of disrepair or disappeared altogether is insufficient evidence upon which to base adverse possession claim. Davis v. Clement, 468 So. 2d 58, 1985 Miss. LEXIS 2037 (Miss. 1985).

Evidence that the father of adverse claimant, with permission of the then owner, built a fence around the disputed acreage in 1907, while title thereto was in the State, and for some time afterwards the fence was not kept in repair and neighborhood cattle grazed at will thereon after crops were gather, and claimant had failed to have the property assessed for taxes, did not show exclusive possession in the adverse claimant as against the rights of purchaser under a valid tax sale. Harmon v. Buckwalter, 233 Miss. 761, 102 So. 2d 895, 1958 Miss. LEXIS 438 (Miss. 1958).

The chancellor did not err in dismissing with prejudice a proceeding by a landowner to confirm title to two small parcels of land adjoining his 40-acre tract on the ground that he had acquired title thereto by adverse possession as against the adjoining landowner, where the adverse claimant did not erect any improvements upon the disputed land, or cut the timber on the land, but merely cultivated some portion thereof part of the time, and the zigzag fence, erected by claimant, had been strung on trees, bushes and poles and had not been kept in repair. Mason v. Gaddis Farms, Inc., 230 Miss. 666, 93 So. 2d 629, 1957 Miss. LEXIS 408 (Miss. 1957).

Evidence was insufficient to show that cotenants had divested one of their cotenants of her record title to one-half of the surface and three-tenths of the minerals by an ouster and adverse possession for more than ten years. Anderson v. Boyd, 229 Miss. 596, 91 So. 2d 537, 1956 Miss. LEXIS 642 (Miss. 1956).

Evidence supported the chancellor's finding that grantor's re-entry into land was, in the outset, permissive, and the grantor was a tenant and had paid rent as late as September 10, 1945, and his claim to adverse possession had not equalled the necessary period of ten years before the action was filed by the widow of his grantee. Walker v. McLaurin, 229 Miss. 425, 90 So. 2d 857, 1956 Miss. LEXIS 621 (Miss. 1956).

Complainant entering under invalid tax deed failed to meet burden of proof to establish ten years adverse possession where evidence disclosed that no use was made of the land after tax sale except cultivation of small patches, that land was unimproved, and that there was no actual occupancy of the land by anyone. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477, 1950 Miss. LEXIS 256 (Miss. 1950).

Proof by adverse claimant to 40-acre tract that he resided thereon in a house which he constructed, had a garden and potato patch, had at one time fenced about two acres thereof, that the remainder of the tract was second growth timber, which he allegedly guarded against fire and trespassers, without any proof as to the location of his house or the two acres fenced by him on the tract, was insufficient to establish title by adverse possession, it also appearing that taxes were paid by record owner. Page v. O'Neal, 207 Miss. 350, 42 So. 2d 391, 1949 Miss. LEXIS 347 (Miss. 1949).

Evidence was insufficient to establish that defendant was in adverse possession of an adjacent tract of land for the requisite period of ten years where there was no evidence that defendant's predecessor in title ever made claim to the land in question, although there was evidence to show that defendant as tenant of such predecessor and without its knowledge cultivated the land in question. Southern Naval Stores Co. v. Price, 202 Miss. 116, 30 So. 2d 505, 1947 Miss. LEXIS 248 (Miss. 1947).

In suit to quiet title, filed in 1934, evidence that from 1920 to 1924 and from 1928 to 1931, defendant's predecessors recognized complainant's predecessor and complainant as landlords and paid rent, did not establish claim to title through adverse possession, allegedly beginning in 1917. Lucas v. New Hebron Bank, Inc., 181 Miss. 762, 180 So. 611, 1938 Miss. LEXIS 116 (Miss. 1938).

35. Instructions.

In ejectment, under conflicting evidence, erroneous instruction that defendant's adverse possession must be undisputed held not cured by instruction that defendant should have verdict regardless of other facts in case if he has actual, uninterrupted, hostile, and adverse possession. May v. Culpepper, 177 Miss. 811, 172 So. 336, 1937 Miss. LEXIS 170 (Miss. 1937).

36. Miscellaneous.

Trial court improperly found that siblings did not acquire title to property by adverse possession because it erred in limiting its focus to the period of time after the date of a corporation's purchase; further inquiry was crucial in determining whether the siblings adversely possessed the disputed property at any point prior to the corporation's purchase of the land. Rester v. Greenleaf Res., Inc., 160 So. 3d 743, 2015 Miss. App. LEXIS 188 (Miss. Ct. App. 2015).

Although not addressed in the pleadings for a boundary line dispute, because evidence was heard on an adverse possession claim, the claim was tried by consent and the chancellor should have ruled on the claim in the judgment. Stewart v. Graber, 754 So. 2d 1281, 1999 Miss. App. LEXIS 711 (Miss. Ct. App. 1999).

Period of adverse possession by remainderpersons could begin running against interests of third parties prior to date outstanding life estate on property was removed; life tenant's possession was hostile as to third parties and could be tacked on to remainderperson's interest. Ramsey v. Copiah Bank, N.A., 678 So. 2d 637, 1996 Miss. LEXIS 208 (Miss. 1996).

A statement made by a record owner's predecessor in title to an adverse claimant that he owned the land in question and that he wanted to get the matter settled so that there would be no question about the boundary line was insufficient to negate the claimant's adverse possession of the property or to establish that his possession was with the permission of the predecessor in title where the claimant never wavered in his position that he owned the land in dispute, and the predecessor in title did nothing to interfere with the claimant's possession and claim of ownership of the land. Rice v. Pritchard, 611 So. 2d 869, 1992 Miss. LEXIS 784 (Miss. 1992).

Neither party claiming ownership to a disputed parcel of land established title by adverse possession where both parties constructively possessed the land by their deeds, but the possession of each party against the other, if adverse, was inexplicably intermittent, or alternated with use by the true owner, so that both parties failed to prove hostile and exclusive possession of the land to which each held record title for a period of 10 years. Blankinship v. Payton, 605 So. 2d 817, 1992 Miss. LEXIS 593 (Miss. 1992).

The party asserting adverse possession as the basis for other claim of title has the burden of proof on the issue. Roy v. Kayser, 501 So. 2d 1110, 1987 Miss. LEXIS 2280 (Miss. 1987).

Chancellor is the trier of facts and his determination that parties had not established adverse possession claim to land would not be overturned on appeal where not manifestly wrong. Savage v. Parrish, 488 So. 2d 1342, 1986 Miss. LEXIS 2476 (Miss. 1986).

In an action by a husband and a wife to remove clouds upon their property title and for injunctive relief, the trial court erred in concluding that the defendants had failed to plead and prove adverse possession where the defendants had claimed title to the area in question by deed and had testified that they had used the disputed property for 25 years, erecting a storage shed and cultivating a garden thereon; although the defendants did not seek by cross-bill to cancel the claim of the husband and the wife to the property and confirm and quiet title in themselves, the allegations in their answer sufficiently raised the defense of adverse possession. Pittman v. Simmons, 408 So. 2d 1384, 1982 Miss. LEXIS 1856 (Miss. 1982).

Sections 716 and 717, Code of 1942, were inapplicable to an action to determine ownership of land in which the plaintiffs claimed an undivided one half interest, and in which defendants, who were successors in interest to a tenant in common who had also acquired tax title to the land, claimed title through adverse possession and laches; but the parties' rights were to be tested by the ten-year statute of limitations. 231 Miss. 461, 95 So. 2d 563.

Ordinarily ignorance of his or her legal rights by a person against whom land is claimed by adverse possession is no defense against the running of the statutes of limitations. Bonds v. Bonds, 226 Miss. 348, 84 So. 2d 397, 1956 Miss. LEXIS 406 (Miss. 1956).

Title by adverse possession, set up as defense to claim of title by another, will not be adjudicated affirmatively in the absence of a cross-bill. Downing v. Starnes, 35 So. 2d 536 (Miss. 1948).

Any judgment adjudging plaintiff in an action to remove cloud from his title to be the owner of the land as against one claiming by adverse possession is not binding as against a third person not made a party to the suit who might have acquired a good and perfect title by 10 years' adverse possession. Southern Naval Stores Co. v. Price, 202 Miss. 116, 30 So. 2d 505, 1947 Miss. LEXIS 248 (Miss. 1947).

Continuity of adverse possession is not broken by temporary changes in the actual occupancy of the land between the time of the removal of one tenant and the entry of another. Douglas v. Skelly Oil Co., 201 Miss. 23, 28 So. 2d 227, 1946 Miss. LEXIS 354 (Miss. 1946).

RESEARCH REFERENCES

ALR.

Occupancy of premises by both record owner and another as notice of title or interest of latter. 2 A.L.R.2d 857.

Adverse possession by religious society. 4 A.L.R.2d 123.

Adverse possession: Mortgagee's possession before foreclosure as barring right of redemption. 7 A.L.R.2d 1131.

Change in party after statute of limitations has run. 8 A.L.R.2d 6.

Title by adverse possession as affected

by recording statutes. 9 A.L.R.2d 850.

Taking adverse possession of area not within description of deed or contract. 17 A.L.R.2d 1128.

Adverse possession: Sufficiency, as regards continuity, of seasonable possession other than for agricultural or logging purposes. 24 A.L.R.2d 632.

Estoppel to rely on statute of limitations. 24 A.L.R.2d 1413.

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants. 32 A.L.R.2d 1214.

Acquisition of title to mines or minerals by adverse possession. 35 A.L.R.2d 124.

Possession of mortgagor or successor in interest as adverse to purchaser at foreclosure sale. 38 A.L.R.2d 348.

Adverse possession of landlord as affected by tenant's recognition of title of third person. 38 A.L.R.2d 826.

Grantor's possession as adverse possession against grantee. 39 A.L.R.2d 353.

Reputation as to ownership or claim as admissible on question of adverse possession. 40 A.L.R.2d 770.

Acquisition of title to ground through adverse possession by cemetery or graveyard authorities. 41 A.L.R.2d 925.

Adverse possession under parol gift of land. 43 A.L.R.2d 6.

Adverse possession of executor or administrator or his vendee as continuous with that of ancestor and heirs. 43 A.L.R.2d 1061.

Title by or through adverse possession as marketable. 46 A.L.R.2d 544.

Tax sales or forfeitures by or to governmental units as interrupting adverse possession. 50 A.L.R.2d 600.

Judgment or decree as color of title. 71 A.L.R.2d 404.

Acquisition of right of way by prescription as affected by change of location or deviation during prescriptive period. 80 A.L.R.2d 1095.

Adverse possession involving ignorance or mistake as to boundaries-modern views. 80 A.L.R.2d 1171.

Appointment of guardian for incompetent or for infant as affecting running of statute of limitations against ward. 86 A.L.R.2d 965.

Adverse possession based on encroachment of building or other structure. 2 A.L.R.3d 1005.

When does cause of action accrue, for purposes of statute of limitations, against action based upon encroachment of building or other structure upon land of another. 12 A.L.R.3d 1265.

Acquisition of title to land by adverse possession by state or other governmental unit or agency. 18 A.L.R.3d 678.

Grazing of livestock or gathering of natural crop as fulfilling traditional elements of adverse possession. 48 A.L.R.3d 818.

Use of property by public as affecting acquisition of land by adverse possession. 56 A.L.R.3d 1182.

Owner's surveying of land as entry thereon tolling running of statute of limitations for purposes of adverse possession. 76 A.L.R.3d 1202.

Adverse possession between cotenants who are unaware of cotenancy. 27 A.L.R.4th 420.

Grazing of livestock, gathering of natural crop, or cutting of timber by record owner as defeating exclusiveness or continuity of possession by one claiming title by adverse possession. 39 A.L.R.4th 1148.

Scope of prescriptive easement for access (easement of way). 79 A.L.R.4th 604.

Am. Jur.

3 Am. Jur. 2d, Adverse Possession §§ 1, 3, 5 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Adverse Possession, Forms 1 et seq; Form 2.1 (complaint, petition, or declaration – hostile possession for longer than statutory period – another form); Form 73.1 (complaint, petition, or declaration-boundary line dispute-construction of fence).

1A Am. Jur. Legal Forms 2d, Adverse Possession §§ 11:9 et seq. (notices).

1 Am. Jur. Proof of Facts, Adverse Possession, Proof No. 1 (actual possession); Proof No. 2 (open and notorious character of possession); Proof No. 4 (exclusiveness of possession).

28 Am. Jur. Proof of Facts 2d 703, Permissive Possession or Use of Land.

39 Am. Jur. Proof of Facts 2d 261, Acquisition of Title to Property by Adverse Possession.

2 Am. Jur. Proof of Facts 3d 125, Establishment of Private Prescriptive Easement.

2 Am. Jur. Proof of Facts 3d 197, Establishment of Public Prescriptive Easement.

§ 15-1-15. Three years' actual occupation under a tax title bars suit.

Actual occupation for three years, after two years from the day of sale of land held under a conveyance by a tax collector in pursuance of a sale for taxes, shall bar any suit to recover such land or assail such title because of any defect in the sale of the land for taxes, or in any precedent step to the sale, saving to minors and persons of unsound mind the right to bring suit within such time, after the removal of their disabilities, and upon the same terms as is provided for the redemption of land by such persons.

HISTORY: Codes, 1871, § 1709; 1880, § 539; 1892, § 2735; 1906, § 3095; Hemingway's 1917, § 2459; 1930, § 2288; 1942, § 716; Laws, 1912, ch. 233.

Cross References — Proceedings to confirm tax title, see § 11-17-1.
Suits to cancel tax title, see § 15-1-17.
Three-year general statute of limitations, see § 15-1-29.

JUDICIAL DECISIONS

ANALYSIS

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1. In general.

Where the public has enjoyed access to waters for more than 10 consecutive years, those waters belong to the state by adverse possession, to be held in trust for the people. Waters used by the public under a claim of right, openly, notoriously, peacefully, continuously and uninterrupted for more than 10 years become public and, once public, such waters may not be lost by prescription. Dycus v. Sillers, 557 So. 2d 486, 1990 Miss. LEXIS 8 (Miss. 1990).

The 3-year possession statute was intended to cut off the right to assert the invalidity of the tax sale. Yocom v. Patton, 277 So. 2d 110, 1973 Miss. LEXIS 1405 (Miss. 1973).

The tax collector's certified list of lands sold for taxes is a conveyance under this statute. Yocom v. Patton, 277 So. 2d 110, 1973 Miss. LEXIS 1405 (Miss. 1973).

This section [Code 1942, § 716] and Code 1942, § 717, were inapplicable to an action to determine ownership of land in which the plaintiffs claimed an undivided one half interest, and in which defendants, who were successors in interest to a tenant in common who had also acquired tax title to the land, claimed title through adverse possession and laches; but the parties' rights were to be tested by the ten-year statute of limitations. 231 Miss. 461, 95 So. 2d 563.

Where minerals had been severed from the surface, and defendants, claiming under a color of title of a void tax deed, although exercising acts of ownership of which the surface was susceptible, had never taken actual possession of any of the minerals, they did not acquire rights to the minerals by adverse possession, so that plaintiffs who held mineral rights to the land through inheritance from the grantor of the surface rights did not lose their rights to the minerals by limitations or laches. White v. Merchants & Planters Bank, 229 Miss. 35, 90 So. 2d 11, 1956 Miss. LEXIS 583 (Miss. 1956).

The only conveyance which the tax collector executes or is authorized to execute is his certified list of lands sold for taxes. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229, 1951 Miss. LEXIS 300 (Miss. 1951).

The word conveyance as used in § 716, Code of 1942, which provides that three years actual occupation of land held under a conveyance by a tax collector shall bar suit to recover such land, does not necessarily mean a deed of conveyance to be executed by the chancery clerk under § 9958, Code of 1942 providing for execution of deeds of conveyance to individuals purchasing land at tax sales. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229, 1951 Miss. LEXIS 300 (Miss. 1951).

Three years of actual occupation by tax title purchaser divests the holder of the legal title of all right, title and interest in the land. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72, 1947 Miss. LEXIS 381 (Miss. 1947).

The statute [Code 1880, § 539] applies to sales made before as well as after its enactment, and to apparent as well as real delinquents. Patterson v. Durfey, 68 Miss. 779, 9 So. 354 (Miss. 1891), overruled, Hoskins v. Illinois C. R. Co., 78 Miss. 768, 29 So. 518, 1901 Miss. LEXIS 134 (Miss. 1901).

As to the curative effect of statutes like Code 1942, § 716. Sigman v. Lundy, 66 Miss. 522, 6 So. 245, 1889 Miss. LEXIS 142 (Miss. 1889); Metcalfe v. Perry, 66 Miss. 68, 5 So. 232, 1888 Miss. LEXIS 62 (Miss. 1888); Nevin v. Bailey, 62 Miss. 433, 1884 Miss. LEXIS 99 (Miss. 1884); Gibson v. Berry, 66 Miss. 515, 6 So. 325, 1889 Miss. LEXIS 140 (Miss. 1889).

The statute [Code 1880, § 539] was never intended to defeat a subsequently acquired tax-title. Lewis v. Siebles, 65 Miss. 251, 3 So. 652, 1887 Miss. LEXIS 48 (Miss. 1887).

2. Lands subject.

Title and ownership of land does not depend upon the validity or invalidity of the tax sales and the Forfeited Tax Land Patents which were subsequently acquired since if the sales were legally and validly made then the titles that are derived through the Forfeited Tax Land Patents are good under § 15-1-15 and, on the other hand, if one or more of the tax sales was invalid or illegal then title to the lands in question remained in individuals and thereby was subject to acquisition by purchasers through adverse possession under § 15-1-13. United States v. 613.86 Acres of Land, 507 F. Supp. 327, 1980 U.S. Dist. LEXIS 16079 (N.D. Miss. 1980).

Where a party enters into the possession of land under color of title, he is not considered as a mere disseizor, and confined to the part of premises in his actual occupancy, but his claim extends to all the lands embraced in the deed under which he claims. Smith v. Cook, 213 Miss. 876, 58 So. 2d 27, 1952 Miss. LEXIS 437 (Miss. 1952).

Neither this section [Code 1942, § 716] nor the two-year statute of limitations provided by Code 1942, § 717, has any application to a tax title claim by one cotenant against another. Smith v. Smith, 211 Miss. 481, 52 So. 2d 1, 1951 Miss. LEXIS 379 (Miss. 1951).

A conveyance from the chancery clerk is necessary to transfer title to the tax purchaser, where the sheriff and the tax collector's list of tax sale has been duly made and filed with the clerk. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229, 1951 Miss. LEXIS 300 (Miss. 1951).

This section [Code 1942, § 716] does not confer title to state lands since they are not subject to taxation, tax deed in such case being wholly void. Penick v. Floyd Willis Cotton Co., 119 Miss. 828, 81 So. 540, 1919 Miss. LEXIS 50 (Miss. 1919); Leavenworth v. Reeves, 106 Miss. 722, 64 So. 660, 1914 Miss. LEXIS 12 (Miss. 1914).

This section [Code 1942, § 716] inapplicable to wild land not occupied by anyone. Dubose v. McNeil, 104 Miss. 634, 61 So. 706, 1913 Miss. LEXIS 83 (Miss. 1913).

The statute [Code 1942, § 716] applies only to lands that were taxable when sold for taxes. Mitchell v. Bond, 84 Miss. 72, 36 So. 148, 1904 Miss. LEXIS 13 (Miss. 1904); Hoskins v. Illinois C. R. Co., 78

Miss. 768, 29 So. 518, 1901 Miss. LEXIS 134 (Miss. 1901).

The statute [Code 1942, § 716] applies, although the land was not subject to sale and although the assessment roll was not properly returned by the assessor. Carlisle v. Yoder, 69 Miss. 384, 12 So. 255, 1891 Miss. LEXIS 101 (Miss. 1891), overruled, Hoskins v. Illinois C. R. Co., 78 Miss. 768, 29 So. 518, 1901 Miss. LEXIS 134 (Miss. 1901).

The statute [Code 1871, § 1709] does not apply to land held under the conveyance of a clerk of the circuit court, made under Acts 1872 and 1873 (Laws 1872 p. 9, and Laws 1873 p. 91), where there is no evidence that such land is held immediately or remotely under a conveyance by a tax-collector. Clay v. Moore, 65 Miss. 81, 3 So. 142, 1887 Miss. LEXIS 20 (Miss. 1887).

3. Defects subject to bar.

Section 15-1-15, which affords a 3-year limitation after a 2-year redemption period following a tax sale, cannot lend validity to a tax sale which is void for want of an adequate description. Although possession of the type required by the statute may set at rest an otherwise void sale, it cannot do so where the invalidity is because of the want of an adequate description. Bowser v. Tootle, 556 So. 2d 1373, 1990 Miss. LEXIS 46 (Miss. 1990).

Where attempted conveyance of mineral and royalty interests in a tract of land by tax deed was void for uncertainty of description, that description could not be cured by occupancy for three years under Code 1942, § 716 irrespective of the degree of such occupancy because the tax purchaser took nothing under this part of the description and there was no color of title which could be perfected under the statute. Wilson v. Clark, 278 So. 2d 250, 1973 Miss. LEXIS 1422 (Miss. 1973).

This section [Code 1942, § 716] is not applicable where claim was under void tax deed constituting color of title. Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 1952 Miss. LEXIS 494 (Miss. 1952).

A void tax deed may serve as color of title and be the basis of an adverse possessory claim. Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 1952 Miss. LEXIS 494 (Miss. 1952).

Where the state highway commission condemned a strip of land for highway purposes as against the holder of a tax title thereto, and it went into possession and occupied the same for more than three years, such period of possession without challenge on the part of the original owner destroyed the owner's right to challenge the commission's ownership, notwithstanding that the tax sale was void. Baldwin v. Mississippi State Highway Dep't, 187 Miss. 642, 193 So. 789, 1940 Miss. LEXIS 243 (Miss. 1940).

Statute respecting three years' occupancy held inapplicable, where assessment and tax deed were nullities because of insufficient description. Patterson v. Morgan, 161 Miss. 807, 138 So. 362, 1931 Miss. LEXIS 316 (Miss. 1931).

The statute [Code 1942, § 716] is designed to cure one link in a title; that is, the possession continued for three years under a conveyance makes the sale a valid and legal sale for all purposes after the expiration of such time, but such possession does not cure a defect in a subsequent conveyance; accordingly, possession of a purchaser through conveyance from a municipality of land acquired by the municipality at a tax sale did not operate to cure the defects in the sale where no authority for such conveyance was provided by ordinance. Byrd v. Dickson, 152 Miss. 605, 120 So. 562, 1929 Miss. LEXIS 231 (Miss. 1929).

Occupancy for 3 years after 2 years from tax sale ripens into good title, though tax sale was void. Dimitry v. Lewis, 150 Miss. 818, 117 So. 265, 1928 Miss. LEXIS 178 (Miss. 1928).

Amendment eliminating former clause declaring the statute inapplicable to void sales and making statute applicable to actions claiming sale void held to apply to tax sale made prior thereto. Slawson v. W. T. Adams Mach. Co., 117 Miss. 777, 78 So. 753, 1918 Miss. LEXIS 220 (Miss. 1918).

This section [Code 1942, § 716] applies to any defects in tax titles. Littlier v. Boddie, 104 Miss. 178, 61 So. 171, 1913 Miss. LEXIS 17 (Miss. 1913).

Possession for three years under void tax sale confers good title. Smith v. Leavenworth, 101 Miss. 238, 57 So. 803, 1911 Miss. LEXIS 130 (Miss. 1911), writ of error dismissed, 235 U.S. 690, 35 S. Ct. 205, 59 L. Ed. 427, 1914 U.S. LEXIS 1047 (U.S. 1914).

Possession under tax sale made under unconstitutional law, for the statutory period confers title on purchaser. Hamner v. Yazoo Delta Lumber Co., 100 Miss. 349, 56 So. 466, 1911 Miss. LEXIS 48 (Miss. 1911); Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, 1907 Miss. LEXIS 92 (Miss. 1907), overruled, Hamner v. Yazoo Delta Lumber Co., 100 Miss. 349, 56 So. 466, 1911 Miss. LEXIS 48 (Miss. 1911); McLemore v. Anderson, 92 Miss. 42, 43 So. 878, 1907 Miss. LEXIS 4 (Miss. 1907), overruled, Hamner v. Yazoo Delta Lumber Co., 100 Miss. 349, 56 So. 466, 1911 Miss. LEXIS 48 (Miss. 1911).

Three-year statute inapplicable to illegal purchase of land by chancery clerk at tax sale. Barker v. Jackson, 90 Miss. 621, 44 So. 34, 1907 Miss. LEXIS 103 (Miss. 1907).

The statute [Code 1880, § 539] protects a tax title, although the sale was made on the wrong day and under a law (in this case the abatement act of 1875) not applicable. Brougher v. Stone, 72 Miss. 647, 17 So. 509, 1895 Miss. LEXIS 20 (Miss. 1895).

4. Actual occupation defined.

Under § 15-1-15, "actual occupancy" does not mean that one must reside personally upon the property but it does mean possession over the 3-year period which is of such a nature, throughout the 3-year period, that another, believing himself or herself to be the owner of the property, would recognize that someone else was asserting a claim to it because of a clearly visible indicia of occupancy on the property. Bowser v. Tootle, 556 So. 2d 1373, 1990 Miss. LEXIS 46 (Miss. 1990).

The occupancy referred to in Code 1942, § 716, must be by someone claiming under color of title by and through the tax collector's deed and in the absence of such claim and occupancy, the three-year term proscribed by this section does not begin to run. Wilson v. Clark, 278 So. 2d 250, 1973 Miss. LEXIS 1422 (Miss. 1973).

It is not mere adverse possession that gives title under Code 1942, § 716 but it is actual occupation claiming under a conveyance by a tax collector in pursuance of a tax sale. Yocom v. Patton, 277 So. 2d 110, 1973 Miss. LEXIS 1405 (Miss. 1973).

The words "actual occupation" under this section [Code 1942, § 716], do not require the tax buyer to go and live upon or use the premises, but he may occupy the land by a tenant and the occupancy of his tenant is the occupancy of the tax buyer. Cox v. Richerson, 186 Miss. 576, 191 So. 99, 1939 Miss. LEXIS 230 (Miss. 1939).

The possession necessary to put the statute in operation must be an actual occupancy of at least a part of the land and continuous from the time named. Pearce v. Perkins, 70 Miss. 276, 12 So. 205, 1892 Miss. LEXIS 103 (Miss. 1892).

5. —Applicability.

The section [Code 1942, § 716] is not applicable to a suit to remove a tax sale as a cloud of title to wild land which has never been actually occupied by anyone. Waldrop v. Whittington, 213 Miss. 567, 57 So. 2d 298, 1952 Miss. LEXIS 397 (Miss. 1952).

This section [Code 1942, § 716] applies to those who have actual occupation "under a conveyance by a tax collector", and the sheriff of the county is the tax collector and the chancery clerk is not a tax collector. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229, 1951 Miss. LEXIS 300 (Miss. 1951).

Law relating to actual possession curing defect in tax sale relates only to sale followed by possession therein described; privity between purchaser at tax sale and person in possession is required for application of law relating to possession curing defects in sale; possession by purchaser through conveyance from municipality of lands acquired by the municipality at tax sale without ordinance authorizing such conveyances did not operate to cure defects in sale. Byrd v. Dickson, 152 Miss. 605, 120 So. 562, 1929 Miss. LEXIS 231 (Miss. 1929).

Where two tracts were contiguous and all of one and part of the other were adversely occupied under tax title, statute operates as to both. Dimitry v. Lewis, 150 Miss. 818, 117 So. 265, 1928 Miss. LEXIS 178 (Miss. 1928).

Proof of the occupancy of one of two contiguous lots embraced in the deed, there being no evidence as to the possession of the other, will protect the title to both. Brougher v. Stone, 72 Miss. 647, 17 So. 509, 1895 Miss. LEXIS 20 (Miss. 1895).

6. —Purpose.

The legislature intended by this section [Code 1942, § 716] that the possession of the holders of the tax title should be of such character and evidenced by such change of occupancy and acts of ownership as to leave no doubt as to whether the former owner would be thereby afforded the means of becoming advised that the title was being claimed pursuant to the tax sale. Smith v. Anderson, 193 Miss. 161, 8 So. 2d 251, 1942 Miss. LEXIS 103 (Miss. 1942).

The purpose of this section [Code 1942, § 716] is to require an actual possession as against a mere constructive possession under a paper title. Cox v. Richerson, 186 Miss. 576, 191 So. 99, 1939 Miss. LEXIS 230 (Miss. 1939).

7. —Requirements.

In order to show adverse possession, there is a necessity for unequivocal acts showing an occupancy which is actual, continuous, and hostile, especially where such occupancy is by a member of a family against another. Coleman v. L. & M. Land & Mineral Corp., 54 So. 2d 213 (Miss. 1951).

Without color of title, adverse possession gives title only to the land actually and continuously used, cultivated or occupied. Parks v. Simmons, 52 So. 2d 14 (Miss. 1951).

The character and type of "adverse possession" required under Code 1942, § 717, limiting the time for attacking validity of tax sale to the state, is that pertaining to ten years adverse possession, and not that under this section [Code 1942, § 716]. Leavenworth v. Claughton, 197 Miss. 606, 20 So. 2d 821, 1945 Miss. LEXIS 300 (Miss. 1945).

While, under the ten years' adverse possession statute one may acquire title to land without actually occupying it, either himself or by tenant, but by merely cultivating, pasturing, cutting and selling timber, and other acts of ownership and control over the same, under the three-year statute it is required that there be actual occupancy for three years, and not the mere exercise of acts of ownership and control such as would give title by adverse possession without actual occupation. Smith v. Anderson, 193 Miss. 161, 8 So. 2d 251, 1942 Miss. LEXIS 103 (Miss. 1942).

8. —Particular cases.

A forfeited tax land patent void on its face constitutes color of title to the land therein described and possession for 3 years after 2 years from the date of the tax sale bars any action to invalidate the tax title. Yocom v. Patton, 277 So. 2d 110, 1973 Miss. LEXIS 1405 (Miss. 1973).

Possession by mortgagee under void deed of trust and claim of color of title under a tax deed which failed to describe the land, with subsequent possession consisting of occupancy of the premises through the person who owned the land at the time of the purported tax sale, did not sustain defendant's claim of adverse possession and owner was entitled to decree canceling such claim as cloud upon his title. Heidelberg v. Duckworth, 206 Miss. 388, 40 So. 2d 179, 1949 Miss. LEXIS 269 (Miss. 1949).

Claimant to land under void tax title could not invoke the three-year limitation period under this section [Code 1942, § 716] to support his claim of title where he never occupied the land either subsequent or prior to the sale. Thompson v. Reed, 199 Miss. 129, 23 So. 2d 888, 1945 Miss. LEXIS 276 (Miss. 1945).

Fact that patentee's vendee of wild and uncultivated land sold to the state under void tax sale paid taxes on the land continuously for three or four years prior to the filing of suits by the former owners to determine title, gave a deed of trust thereon for each of such years, and went upon such lands in person or by agent and offered to sell some timber therefrom although no timber was actually sold, cut or removed, did not constitute sufficient adverse possession to put the former owners on notice that their constructive possession of such land had been invaded, so that the two-year limitation period under

Code 1942, § 717 was not available to the vendee. Thompson v. Reed, 199 Miss. 129, 23 So. 2d 888, 1945 Miss. LEXIS 276 (Miss. 1945).

While a claimant under a void tax title may not be required to change the tenants on a farm in order to put the three-year statute in operation, he is not entitled to claim the benefit of the statute where he knows that the alleged change in actual occupation is being successfully and skillfully concealed from the former owners by reason of the fact that the agents or tenants of the former owners are allowed to rent out the land and exercise full management and control of the property in the same manner as they had done prior to the tax sale. Smith v. Anderson, 193 Miss. 161, 8 So. 2d 251, 1942 Miss. LEXIS 103 (Miss. 1942).

9. Persons who may invoke bar.

This section [Code 1942, § 716] does not bar suit by tenant in common against cotenant in possession, as cotenant in possession has duty to pay taxes or to redeem from tax sale for benefit of all tenants in common, he cannot purchase any interest adverse to cotenants, and purchase of outstanding tax title by tenant in common inures to benefit of all tenants, the cost of redemption being common charge against property held in common. Howard v. Wactor, 41 So. 2d 259 (Miss. 1949).

Grantees of cotenant in possession who attempted to purchase land at tax sale cannot invoke this section [Code 1942, § 716], grantees taking land with notice since it is shown by record of title purchased that grantor was cotenant and disabled to acquire title for himself by purchase of tax title. Howard v. Wactor, 41 So. 2d 259 (Miss. 1949).

The effect of eminent domain proceedings against the holder of a tax title to the land in question, is to acquire the right of easement from such tax title holder, and the corporation or body condemning was entitled under the statute to enter and take possession and use the property for the purpose condemned, and was vested with all the rights and privileges that the party having the tax title would have, among which is the right to enter possession if it can peaceably do so, and hold possession for the statutory period under this section [Code 1942, § 716]. Baldwin v. Mississippi State Highway Dep't, 187 Miss. 642, 193 So. 789, 1940 Miss. LEXIS 243 (Miss. 1940).

Since the chancery clerk could not legally become a purchaser of land at the tax sale, one claiming through him could not invoke the bar of the statute. Barker v. Jackson, 90 Miss. 621, 44 So. 34, 1907 Miss. LEXIS 103 (Miss. 1907).

Neither one under duty to redeem, nor those claiming through him, can purchase a tax title from the state and invoke the statute. Lyebrook v. Hall, 73 Miss. 509, 19 So. 348, 1895 Miss. LEXIS 168 (Miss. 1895).

A cotenant who has acquired a tax title cannot invoke the statute. Jonas v. Flanniken, 69 Miss. 577, 11 So. 319, 1891 Miss. LEXIS 95 (Miss. 1891).

The section [Code 1942, § 716] applies as well to a purchaser from the state of tax lands as to a purchaser from the tax collector. Pipes v. Farrar, 64 Miss. 514, 1 So. 740, 1886 Miss. LEXIS 101 (Miss. 1886).

The statute [Code 1942, § 716] cannot be availed of where the occupant could not, if his tax title were perfect, assert it against the claimant of the land; its effect is to protect from assailment the tax title of one who, being authorized under the principles of law to claim under a sale for taxes, finds his title, which, if valid, would protect his possession, attacked for irregularities existing in the proceedings of sale. McGee v. Holmes, 63 Miss. 50, 1885 Miss. LEXIS 11 (Miss. 1885).

Where at the time of tax sale, the purchaser was in possession as mortgagee under one to whom a life tenant had conveyed the land, the statute could not be availed of as against the title of the heirs at law of the original owner. McGee v. Holmes, 63 Miss. 50, 1885 Miss. LEXIS 11 (Miss. 1885).

10. Persons affected.

Remaindermen are not barred under this section [Code 1942, § 716] from attacking a void tax title where the duty to pay the taxes rested upon the life tenant, who was still living, notwithstanding that they might have filed a bill to establish their rights as remaindermen, as against the void tax title, they being unable in such a suit to obtain possession prior to the death of the life tenant. Cox v. Richerson, 186 Miss. 576, 191 So. 99, 1939 Miss. LEXIS 230 (Miss. 1939).

This statute [Code 1942, § 716] is a mere statute of limitations and was not intended to cut off remaindermen, whose right of action does not accrue until the death of the life tenant; and the word "assail" adds no force to the statute since without it the statute would mean the same thing. Carter v. Moore, 183 Miss. 112, 183 So. 512, 1938 Miss. LEXIS 223 (Miss. 1938).

11. Running of limitation period.

Chancellor properly held that the property at issue belonged to a tax sale purchaser because her claim did not arise when she began renting from the former owner in 1993, rather it arose when she bought the property at a tax sale and paid the ad valorem taxes on the property thereafter, the former owner did not redeem the property, and, even if there were defects in the publication of the notice of the tax sale, they were cured by the former tenant's occupancy of the property for approximately seven years after the tax sale. McNatt v. Turbeville, 162 So. 3d 881, 2015 Miss. App. LEXIS 234 (Miss. Ct. App. 2015).

Limitation period provided by this section [Code 1942, § 716] does not begin to run against former owner or his vendee until their possession, whether actual or constructive, has been invaded, after alleged tax sale. Ellard v. Logan, 39 So. 2d 485 (Miss. 1949).

Even though it is true that one relying upon this section [Code 1942, § 716] to acquire a title through a void tax sale by means of actual occupation of the land for three years, after the expiration of the period of redemption, is not required to notify the former owners as to the fact of the claim and occupation thereunder, he must do something to denote a change in the character of the possession as compared with that preceding the commencement of the three years' actual occupation relied on, such as would afford the former owners the means of acquiring knowledge that the land is being appropriated to his use under claim of ownership. Smith v. Anderson, 193 Miss. 161, 8 So. 2d 251, 1942 Miss. LEXIS 103 (Miss. 1942).

To set this statute [Code 1942, § 716] in operation there must be some person, either the buyer or his agent, assignee, or vendee, to go upon the premises and use the land in such manner as to show that parties are in possession under claim of right, and in such case the suit to show the tax sale void must be commenced within three years after the expiration of the time for redemption of the sale. Cox v. Richerson, 186 Miss. 576, 191 So. 99, 1939 Miss. LEXIS 230 (Miss. 1939).

Statute begins to run at end of redemption period, where owner retains possession. Carraway v. Lockard, 150 Miss. 704, 116 So. 599, 1928 Miss. LEXIS 130 (Miss. 1928).

A suit to recover because of defects in a tax sale, or any steps leading to the sale, is barred where the purchaser went into actual possession after the expiration of the time allowed for redemption and remained in possession for three years. Butts v. Ricks, 82 Miss. 533, 34 So. 354, 1903 Miss. LEXIS 165 (Miss. 1903).

12. —Redemption.

Possession from the time named will not bar the owner, where within the time allowed there was a redemption, this being a matter occurring after the sale. Cochran v. Richberger, 70 Miss. 843, 12 So. 851, 1893 Miss. LEXIS 39 (Miss. 1893).

13. Evidence.

A purchaser of a tax title from the state, to avail of this statute, must prove that the land was sold for taxes, and a deed from the state unsupported by such proof is insufficient. Bennett v. Chaffe, 69 Miss. 279, 13 So. 731, 1891 Miss. LEXIS 157 (Miss. 1891).

14. Pleading.

Although plaintiff argued that the chancellor should have cancelled and held the tax deed for naught because defendant could not meet the requirements of Miss. Code Ann. § 15-1-15, the issue was irrelevant. The issue of the validity of defendant's tax title was not addressed by the chancellor, except to the extent that the chancellor suggested that defendant could have filed a cross-claim to quiet and confirm title, but that her failure to do so did not nullify her claim of ownership pursuant to the tax deed. Dorris v. Graves, 189 So. 3d 1233, 2016 Miss. App. LEXIS 220 (Miss. Ct. App. 2016).

Where a defendant in a suit to cancel a tax title fails to plead the statute and a decree is rendered canceling the title, his heir, who continues in possession, cannot afterwards invoke the statute against the complainant. Jones v. Merrill, 69 Miss. 747, 11 So. 23, 1892 Miss. LEXIS 2 (Miss. 1892).

RESEARCH REFERENCES

ALR.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed. 5 A.L.R.2d 1021.

Reputation as to ownership or claim as admissible on question of adverse possession. 40 A.L.R.2d 770.

Adverse possession of executor or administrator or his vendee as continuous with that of ancestor and heirs. 43 A.L.R.2d 1061.

Title by or through adverse possession as marketable. 46 A.L.R.2d 544.

Appointment of guardian for incompetent or for infant as affecting running of statute of limitations against ward. 86 A.L.R.2d 965.

Limitation of action against insurer for breach of contract to defend. 96 A.L.R.3d 1193.

§ 15-1-17. Limitations applicable to actions or suits to cancel tax titles.

The owner, mortgagee or other person interested in any land which has been sold or forfeited to the state for delinquent taxes may bring a suit or action to cancel the title of the state, or its patentees, or to recover said land from the state, or its patentees, on account of any defect, irregularity or illegality in the assessment, levy or sale of such land for delinquent taxes within two years after the period of redemption shall have expired, and not thereafter. However, the limitations herein fixed shall not apply when the taxes on such land had been paid prior to the time it was sold for taxes.

If any person entitled to bring any such suit or action shall, at the time at which the cause of action accrues, be under the disability of infancy, or unsoundness of mind, he may bring the suit or action within the time in this section respectively limited after his disability shall be removed but the saving of persons under disability shall never extend longer than twenty-one years.

The completion of the limitation herein prescribed to bar any action shall defeat and extinguish all the right, title and interest, including the right of possession in and to such land, of any and all persons whatsoever, except the State of Mississippi and its patentees, and it shall vest in the state, and its patentees, a fee simple title to such lands.

HISTORY: Codes, 1942, § 717; Laws, 1934, ch. 196.

Cross References — Proceedings to confirm tax title, see § 11-17-1.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
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1. Validity.

Statute [Code 1942, § 717] held not unconstitutional as impairing contract since it reserves taxpayer full two years after passage in which to assert defects. Russell Inv. Corp. v. Russell, 182 Miss. 385, 178 So. 815, 182 So. 102, 1938 Miss. LEXIS 130 (Miss. 1938).

Statute [Code 1942, § 717] held not unconstitutional as classification violating equal protection of laws. Russell Inv. Corp. v. Russell, 182 Miss. 385, 178 So. 815, 182 So. 102, 1938 Miss. LEXIS 130 (Miss. 1938).

Alleged unconstitutionality, on ground statute vested fee simple title in state or patentees before expiration of three-year period of redemption allowed by Laws 1934 c. 383, would not be considered until case presented wherein statute was sought to be applied so as to cut off unexpired portion of redemption period. Russell Inv. Corp. v. Russell, 182 Miss. 385, 178 So. 815, 182 So. 102, 1938 Miss. LEXIS 130 (Miss. 1938).

2. Construction and application generally.

The holder of a forfeited tax land patent, which was based upon a void assessment and invalid sale to the state, and his successors in title, could not by mere adverse possession of the surface become vested with title to the minerals, which had been antecedently separated. Wilson v. Eckles, 232 Miss. 577, 99 So. 2d 846, 1958 Miss. LEXIS 305 (Miss. 1958).

Under this section [Code 1942, § 717] there must be actual possession by purchaser of tax title. Wall v. Wall, 220 Miss. 642, 71 So. 2d 308, 1954 Miss. LEXIS 480 (Miss. 1954).

Where an attack on the validity of a tax sale was made two years after the sale, the action was barred by this section [Code 1942, § 717]. Brown v. Pittman, 211 Miss. 344, 51 So. 2d 732, 1951 Miss. LEXIS 363 (Miss. 1951).

Claimant acquired title under § 717, Code of 1942, the two-year tax statute of limitations, where there was an invalid tax sale to the state of three parcels of land which were adjoining and constituted and should have been sold as one tract, but where the claimant exercised ownership over the property, paid taxes, gave a turpentine lease under which visible acts upon trees were performed by the lessee, and where the claimant developed a program of reforestation. Broadus v. Hickman, 210 Miss. 885, 50 So. 2d 717, 1951 Miss. LEXIS 323 (Miss. 1951).

The two-year period prescribed by this section [Code 1942, § 717] within which suit may be brought to cancel the title of the state is, in effect, a statute of limitations. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72, 1947 Miss. LEXIS 381 (Miss. 1947).

Neither payment of taxes by patentee or his vendee of land sold to the state under a void tax sale, nor the giving of deeds of trust thereon, or both, constitutes a sufficient invasion of possession which follows legal title of the former owner to require the latter to file suit to set aside the tax sale within the two-year limitation prescribed by this section [Code 1942, § 717]. Thompson v. Reed, 199 Miss. 129, 23 So. 2d 888, 1945 Miss. LEXIS 276 (Miss. 1945).

The two-year limitation of this section [Code 1942, § 717] does not apply where the former owner and his vendees have continuously remained in possession from the time of the tax sale. State v. Butler, 197 Miss. 218, 21 So. 2d 650, 1945 Miss. LEXIS 287 (Miss. 1945).

The character and type of "adverse possession" required under this section [Code 1942, § 717] is that pertaining to ten years' adverse possession, and not that under Code 1942, § 716 respecting three-year actual occupation under a tax title. Leavenworth v. Claughton, 197 Miss. 606, 20 So. 2d 821, 1945 Miss. LEXIS 300 (Miss. 1945).

Statute does not cure or validate defects, irregularities and illegalities in assessment, levy, and sale of land for taxes, but is purely a statute of limitation. It does not take away vested rights but fixes a reasonable period of time in which they may be asserted, leaving former owner the right to sue and have sale declared void because of such defects, etc. Russell Inv. Corp. v. Russell, 182 Miss. 385, 178 So. 815, 182 So. 102, 1938 Miss. LEXIS 130 (Miss. 1938).

Statute [Code 1942, § 717] could be successfully invoked against any suit challenging validity of tax sale to state, embraced within its provisions, on ground of defects, etc., as one of limitation, where effect would be neither to shorten period of redemption, nor divest estate in possession. Russell Inv. Corp. v. Russell, 182 Miss. 385, 178 So. 815, 182 So. 102, 1938 Miss. LEXIS 130 (Miss. 1938).

Though a tax sale is subject to be defeated by redemption within time and in manner prescribed by law, if there is no redemption, sale becomes valid, and title relates back to date of sale and takes precedence over any mortgage, deed, or other instrument executed by owner during period of redemption. Russell Inv. Corp. v. Russell, 182 Miss. 385, 178 So. 815, 182 So. 102, 1938 Miss. LEXIS 130 (Miss. 1938).

Fact that statute ran concurrently with portion of redemption period was immaterial since effect was not to shorten redemption period, and prior to expiration of limitation, taxpayer could enter suit to cancel claim of state's patentee as cloud on his title, whether taxpayer was in possession or not or whether he was threatened to be disturbed in his possession. Russell Inv. Corp. v. Russell, 182 Miss. 385, 178 So. 815, 182 So. 102, 1938 Miss. LEXIS 130 (Miss. 1938).

3. Possession by state or those claiming through it.

Where an action was brought in 1945 against the state to confirm a forfeited tax land patent and there was an adjudication of validity of the patent, and that though fraud had been perpetrated, the land commissioner and attorney general properly refused to cancel the tax sale to state and patent issued thereunder in an action brought therefor in 1949 by the heirs of the original owner of forfeited lands. Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 1952 Miss. LEXIS 494 (Miss. 1952).

Entry of possession by defendant pursuant to patent from state after tax sale to state, with actual knowledge of former owner, and continuance in possession for more than two years with payment of taxes on the land, established adverse possession as against the former owner, notwithstanding that the land was used during such period by neighbors for pasturage with consent of both the former owner and defendants. Webb v. Anderson, 206 Miss. 398, 40 So. 2d 189, 1949 Miss. LEXIS 270 (Miss. 1949).

The former owner is not required to actually occupy the land in the meantime by residing thereon to have it in his possession and under his control in order to prevent the running of the two-year limitation against his right to have a tax title canceled. Smith v. Myrick, 201 Miss. 647, 29 So. 2d 924, 1947 Miss. LEXIS 434 (Miss. 1947).

So long as the real owner of land is in possession, it would be unconstitutional for the legislature to require him to commence an action against anyone claiming through an invalid tax sale to the state. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72, 1947 Miss. LEXIS 381 (Miss. 1947).

Whenever it is shown that former owner of land remained in possession thereof after sale for taxes, either in person or by tenant, then statute [Code 1942, § 717] does not apply and claim of title and possession of such owner can be defeated only by proof of a valid assessment, levy and sale, coupled with failure to redeem within time allowed by law. Byrd v. Byrd, 193 Miss. 249, 8 So. 2d 510, 1942 Miss. LEXIS 113 (Miss. 1942); Grant v. Montgomery, 193 Miss. 175, 5 So. 2d 491, 1942 Miss. LEXIS 79 (Miss. 1942); Russell Inv. Corp. v. Russell, 182 Miss. 411, 182 So. 102 (1938); White v. Noblin, 183 Miss. 92, 183 So. 914, 1938 Miss. LEXIS 220 (Miss. 1938).

This statute of limitations [Code 1942, § 717] is wholly inapplicable to a case where, if the former owner does not remain in actual possession, there has been no adverse occupancy or possession by the purchaser at the tax sale, its patentee or his vendee for the period of limitations prescribed. Grant v. Montgomery, 193 Miss. 175, 5 So. 2d 491, 1942 Miss. LEXIS 79 (Miss. 1942).

Where shortly after the first of two sales of property to the state for taxes the former owner moved therefrom, upon destruction of the building thereon by fire, and the property remained vacant, with neither the state nor its patentee taking possession, the statute of limitations did not bar one claiming under the former owner from bringing action more than two years after such sale to cancel as a cloud upon his title the tax sales and subsequent patents from the state because of defects in the tax sales rendering them void. Grant v. Montgomery, 193 Miss. 175, 5 So. 2d 491, 1942 Miss. LEXIS 79 (Miss. 1942).

4. Wild lands.

Neither actual occupation, cultivation, nor residence are necessary to constitute actual possession when the property is so situated as not to admit any permanent useful improvement, and the continued claim of the party has been evidenced by public acts of ownership, such as he would exercise over property which he claimed in his own right, and would not exercise over property which he did not claim. Broadus v. Hickman, 210 Miss. 885, 50 So. 2d 717, 1951 Miss. LEXIS 323 (Miss. 1951).

It is the rule that less notorious and obvious acts upon the land are essential to vest title in what are known as wild lands than lands suitable to occupancy by residing thereon and putting them to husbandry and farming. Broadus v. Hickman, 210 Miss. 885, 50 So. 2d 717, 1951 Miss. LEXIS 323 (Miss. 1951).

Fact that patentee's vendee of wild and uncultivated land sold to the state under void tax sale paid taxes on the land continuously for three or four years prior to the filing of suits by the former owners to determine title, gave a deed of trust thereon for each of such years, and went upon such lands in person or by agent and offered to sell some timber therefrom although no timber was actually sold, cut or removed did not constitute sufficient adverse possession to put the former owners on notice that their constructive possession of such land had been invaded, so that the two-year limitation period under this section [Code 1942, § 717] was not available to the vendee. Thompson v. Reed, 199 Miss. 129, 23 So. 2d 888, 1945 Miss. LEXIS 276 (Miss. 1945).

5. Color of title.

A person in possession under a void instrument where its description is good, is in possession under a color of title and possession is extended from a part to the whole tract under this section [Code 1942, § 717]. Shepherd v. Mahannah, 220 F.2d 737, 1955 U.S. App. LEXIS 3410 (5th Cir. Miss. 1955).

A person in possession of land under color of a tax-forfeited land patent acquires title thereto by the requisite exclusive adverse possession over a period of two years even though the tax deed be void. Shepherd v. Mahannah, 220 F.2d 737, 1955 U.S. App. LEXIS 3410 (5th Cir. Miss. 1955).

A void tax deed may serve as color of title and be the basis of an adverse possessory claim. Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 1952 Miss. LEXIS 494 (Miss. 1952).

This section [Code 1942, § 717] which deals expressly with sales to the state, encompasses possession under color of title. Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 1952 Miss. LEXIS 494 (Miss. 1952).

Without color of title, adverse possession gives title only to the land actually and continuously used, cultivated or occupied. Parks v. Simmons, 52 So. 2d 14 (Miss. 1951).

6. Defects subject to bar.

This statute [Code 1942, § 717] applies only to any defect, irregularity or illegality in the assessment, levy or sale of land for delinquent taxes, and has no reference whatsoever to the question who may purchase at a tax sale and does not remove the disqualification of a wife to purchase at tax sale the tax forfeited land of her husband. Griffin v. Griffin, 194 Miss. 622, 11 So. 2d 311, 1943 Miss. LEXIS 20 (Miss. 1943).

The statute of limitations applies as against either statutory or constitutional objections to the tax sale. Grant v. Montgomery, 193 Miss. 175, 5 So. 2d 491, 1942 Miss. LEXIS 79 (Miss. 1942).

7. Persons affected.

8. —Owner in possession.

The two-year limitation period of § 15-1-17 was inapplicable where a tax sale was void and the owner had remained in possession. Pittman v. Currie, 414 So. 2d 423, 1982 Miss. LEXIS 2030 (Miss. 1982).

Possession by mortgagee under void deed of trust and claim of color of title under a tax deed which failed to describe the land, with subsequent possession consisting of occupancy of the premises through the person who owned the land at the time of the purported tax sale, did not sustain defendant's claim of adverse possession and owner was entitled to decree canceling such claim as cloud upon his title. Heidelberg v. Duckworth, 206 Miss. 388, 40 So. 2d 179, 1949 Miss. LEXIS 269 (Miss. 1949).

The owner of land sold for taxes is not precluded from attacking the tax sale and patent unless the nature of the acts claimed by the holder of the patent to constitute adverse possession and the time when such acts were begun are shown by definite, specific, clear and positive evidence. Smith v. Myrick, 201 Miss. 647, 29 So. 2d 924, 1947 Miss. LEXIS 434 (Miss. 1947).

This statute [Code 1942, § 717] has no application to an owner in possession, whether in person or by a tenant. Byrd v. Byrd, 193 Miss. 249, 8 So. 2d 510, 1942 Miss. LEXIS 113 (Miss. 1942); Grant v. Montgomery, 193 Miss. 175, 5 So. 2d 491, 1942 Miss. LEXIS 79 (Miss. 1942); E. L. Bruce Co. v. Smallwood, 188 Miss. 771, 196 So. 227, 1940 Miss. LEXIS 67 (Miss. 1940).

The limitation provided herein does not apply to preclude a former owner from maintaining a suit to cancel a patent and certain conveyances as a cloud on title, based upon a void tax sale, where such former owner remained in possession, since until his possession is invaded or disturbed by the purchaser at the sale, or by a subsequent vendee of such purchaser, the statute of limitations prescribed by the statute for commencing an action does not begin to run. E. L. Bruce Co. v. Smallwood, 188 Miss. 771, 196 So. 227, 1940 Miss. LEXIS 67 (Miss. 1940).

9. —Cotenants.

This section [Code 1942, § 717] and Code 1942, § 716, were inapplicable to an action to determine ownership of land in which the plaintiffs claimed an undivided one half interest, and in which defendants, who were successors in interest to a tenant in common who had also acquired tax title to the land, claimed title through adverse possession and laches; but the parties' rights were to be tested by the ten-year statute of limitations. 231 Miss. 461, 95 So. 2d 563.

Neither this section [Code 1942, § 717] nor the three-year statute of limitations under Code 1942, § 716, has any application to a tax title claim by one cotenant against another. Smith v. Smith, 211 Miss. 481, 52 So. 2d 1, 1951 Miss. LEXIS 379 (Miss. 1951).

10. Running of limitation period.

In an action to cancel as a cloud on title a sale of property to the state in 1948 for 1947 taxes on minerals, the chancellor properly overruled the state's demurrer where the demurrer admitted the complainant's allegation that the 1948 tax sale had been invalid for failure to comply with the predecessor statute of § 27-41-59 requiring that the tax collector first offer the property in 40-acre tracts. In addition, where the demurrer admitted the allegation that the state had not been in possession of the property since the tax sale, the chancellor properly overruled the special demurrer that the action was barred by the limitations in §§ 13-1-7 [Repealed], 15-1-9, and 15-1-17 since possession is required to start any of the three statutes into operation. Pittman v. Currie, 391 So. 2d 654, 1980 Miss. LEXIS 2182 (Miss. 1980).

Limitation period provided by this section [Code 1942, § 717] does not begin to run against former owner or his vendee until their possession, whether actual or constructive, has been invaded, after alleged tax sale. Ellard v. Logan, 39 So. 2d 485 (Miss. 1949).

The limitation provided for by this section [Code 1942, § 717] does not begin to run against the owner until his possession is invaded by some act of a claimant which amounts to an actual, hostile, adverse possession of the nature required by Code 1942, § 711, the ten years' adverse statute. Smith v. Myrick, 201 Miss. 647, 29 So. 2d 924, 1947 Miss. LEXIS 434 (Miss. 1947).

The period within which the real owner of land must commence an action against anyone claiming through an invalid tax sale to the state does not begin to run so long as the real owner is in possession either in person or by tenant. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72, 1947 Miss. LEXIS 381 (Miss. 1947).

Adverse possession must be maintained continuously for the prescribed two-year period in order to bar the true owner under this section [Code 1942, § 717]. Leavenworth v. Claughton, 197 Miss. 606, 20 So. 2d 821, 1945 Miss. LEXIS 300 (Miss. 1945).

If this section [Code 1942, § 717] were not construed to require adverse possession on the part of the claimant before the limitation period began to run, but started the period running from the date of the sale, it would be unconstitutional. Leavenworth v. Claughton, 197 Miss. 606, 20 So. 2d 821, 1945 Miss. LEXIS 300 (Miss. 1945).

The two-year period of limitation under this section [Code 1942, § 717] does not begin to run until possession of the true owner, whether actual or constructive, is invaded or disturbed by or through claimant under the alleged invalid tax sale by an invasion which amounts to actual, adverse possession. Leavenworth v. Claughton, 197 Miss. 606, 20 So. 2d 821, 1945 Miss. LEXIS 300 (Miss. 1945).

Where patentee of uncultivated, unenclosed, cut-over land sold to the state under an invalid tax sale, did nothing to arrest owner's attention until she had the land surveyed less than two years prior to the filing by the owner of cross-bill challenging the tax sale, there was not sufficient adverse possession for two years necessary to extinguish owner's right and title to the land under this section [Code 1942, § 717]. Leavenworth v. Claughton, 197 Miss. 606, 20 So. 2d 821, 1945 Miss. LEXIS 300 (Miss. 1945).

Until the owner's possession is invaded or disturbed by the purchaser at the tax sale, or by a subsequent vendee of such purchaser, the limitation period prescribed by the statute for commencing an action does not begin to run. E. L. Bruce Co. v. Smallwood, 188 Miss. 771, 196 So. 227, 1940 Miss. LEXIS 67 (Miss. 1940).

11. Rights affected.

Where a tax sale was void because the minutes of the Board of Supervisors were not read and approved when the board adjourned, the defect could have been cured under this section [Code 1942, § 717] by taking and holding possession of the land for two years. Parks v. Simmons, 52 So. 2d 14 (Miss. 1951).

The two-year limitation in this section [Code 1942, § 717] does not apply where the sale to the state is utterly void for want of description and consequently no tax deed to the land exists. Meyerkort v. Warrington, 19 So. 2d 433 (Miss. 1944).

Statutes of limitation do not run in favor of the holder of the tax deed void on its face. Meyerkort v. Warrington, 19 So. 2d 433 (Miss. 1944).

This section [Code 1942, § 717] is more than a mere statute limiting the time within which to bring an action to cancel the title of the state to land sold to it for taxes; for, on the expiration of the time limit in ¶ 1 hereof, it extinguishes all the rights in and to the land of any and all persons whatsoever. Lee v. Smith, 189 Miss. 636, 198 So. 296, 1940 Miss. LEXIS 141 (Miss. 1940).

12. —Right of redemption.

This section [Code 1942, § 717] in no way affects the right of redemption as to land sold prior to its enactment; it simply limits the time within which an action can be brought by an owner of land sold to the state for taxes "to cancel the title of the state, or its patentees, or to recover said land from the state, or its patentees on account of any defect, irregularity or illegality in the assessment, levy or sale of such land for delinquent taxes" to two years after the statute became effective on April 4, 1934. Lee v. Smith, 189 Miss. 636, 198 So. 296, 1940 Miss. LEXIS 141 (Miss. 1940).

Where § 3 of chapter 196, Laws 1934, approved April 4th, 1934, if applied to a case where a tax sale, had prior to the enactment thereof, on September 18, 1933, was void and at that time the owner had three years from the day of the sale in which to redeem, would extinguish such right of redemption at the expiration of two years from the date of sale, thereby cutting off five months, fourteen days from the time in which the owner could redeem it, and would be unconstitutional, such section is inoperative to that extent so that the right of the owner to redeem the land from the tax sale would be unaffected thereby; a constitutional defect in such section, as applied to such circumstances, does not render it wholly void but simply requires that its operation be so restricted as to preserve the right of redemption that existed when the land was sold for taxes. Lee v. Smith, 189 Miss. 636, 198 So. 296, 1940 Miss. LEXIS 141 (Miss. 1940).

13. Effect of redemption.

When the owner of land sold for taxes redeemed it therefrom, the chancery clerk, through whom the redemption must be made, was required to execute to him a release of all claim or title of the state or purchaser to such land, by virtue of which the tax sale from which the land was regained is without further efficacy and the owner's title and right to possession do not rest on defects in the assessment or sale of the land so that the necessity for an action to cancel the title of the purchaser at the sale no longer exists. Lee v. Smith, 189 Miss. 636, 198 So. 296, 1940 Miss. LEXIS 141 (Miss. 1940).

An owner of land sold for taxes, which sale is void, may, if he so desires, redeem it from the sale, bring an action to cancel the sale, or await action by the purchaser at the sale or his vendee and then invoke the invalidity of the sale in bar of any title therefrom, this section [Code 1942, § 718] limiting only the time in which the owner of land sold to the state for taxes can plead any defect in the sale referred to in the statute against the state or its patentees. Lee v. Smith, 189 Miss. 636, 198 So. 296, 1940 Miss. LEXIS 141 (Miss. 1940).

14. Actions to cancel title.

The principle that only the state is entitled to have a patent canceled on the sole ground of the fraud committed upon its land commissioner in the procurement thereof, does not preclude the former owners of the land from having the patent canceled in their own right as a cloud upon their title on the separate ground that the tax sale to the state is void as having been made on a date not authorized by law; nor are such former owners prevented from proving the fraud and the notice thereof furnished in the application of the patentee or from emphasizing the grossly inadequate price paid to the state, as disclosed in the reported patent, in answer to a subsequent vendee's contention that he is an innocent purchaser for value without notice. E. L. Bruce Co. v. Smallwood, 188 Miss. 771, 196 So. 227, 1940 Miss. LEXIS 67 (Miss. 1940).

In an action by the owners of land to set aside a patent from the state based upon a sale for delinquent taxes and to cancel a conveyance from the patentee to another, the latter could not successfully maintain that it occupied the position of an innocent purchaser for value without notice, even in the absence of any notice, actual or constructive, of the fraud committed upon the state in procurement of the patent, where the tax sale itself, made on a date not authorized by law, disclosed that the state had acquired no title, and could not convey any by the patent issued to such purchaser's vendor. E. L. Bruce Co. v. Smallwood, 188 Miss. 771, 196 So. 227, 1940 Miss. LEXIS 67 (Miss. 1940).

Where land was sold for delinquent taxes on August 1st, 1932, the court would not inquire into the validity of the tax sale in an action to cancel the sale brought in 1939, since such inquiry would necessitate a decision on the merits, which was the very thing the statute intended to cut off, the only exceptions thereto recognized by the statute being the actual payment of the taxes on the land prior to its sale therefor. Jones v. Russell, 187 Miss. 827, 194 So. 290, 1940 Miss. LEXIS 251 (Miss. 1940).

§ 15-1-19. Limitations applicable to suits to redeem mortgage or deed of trust.

When a mortgagee, after condition broken, shall obtain the actual possession or receipt of the profits or rent of land embraced in his mortgage, the mortgagor, or any person claiming through him, may not bring a suit to redeem the mortgage except within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor, or of his right of redemption, shall have been given in writing, signed by the mortgagee, or the person claiming through him. In such case a suit may not be brought except within ten years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. Such acknowledgment shall be effectual only as against, and to the extent of the interest of the party signing it.

HISTORY: Codes, 1857, ch. 57, art. 3; 1871, § 2149; 1880, § 2666; 1892, § 2732; 1906, § 3092; Hemingway's 1917, § 2456; 1930, § 2289; 1942, § 718.

Cross References — Sale of lands under mortgages and deeds in trust, see § 89-1-55.

Barring of lien where time has lapsed on the face of the record, see § 89-5-19.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Possession; receipt of profits or rent.
3. Persons entitled to invoke bar.
4. Rights and interests barred.
5. Running of limitation period.
6. —Acknowledgment of mortgagor's rights.
7. Laches.

1. In general.

This provision [Code 1942, § 718] may be first pleaded on a retrial. Gaddis & McLaurin, Inc. v. Nichols, 234 Miss. 155, 105 So. 2d 459, 1958 Miss. LEXIS 477 (Miss. 1958).

Where mortgagee was in possession of realty for more than ten years but did not invade the actual and constructive possession of his wife in order to create duty on her part to commence an action for protection of her rights as owner during the occupancy of the mortgagee, the mortgagee acquired no title under this section. Cassidy v. Central Lumber Co., 219 Miss. 96, 67 So. 2d 266, 68 So. 2d 286, 1953 Miss. LEXIS 373, 1953 Miss. LEXIS 374 (Miss. 1953).

This section [Code 1942, § 718] does not apply to deed of trust on homestead void because of wife's failure to join, the statute barring suits after adverse possession of ten years being the applicable statute. Woods v. Campbell, 87 Miss. 782, 40 So. 874, 1905 Miss. LEXIS 219 (Miss. 1905).

Under the statute [Code 1942, § 718], the doctrine as to stale claims not prevailing in this state, a bill to redeem land illegally purchased by a mortgagee at his own sale is only barred by the ten years' limitation. Houston v. National Mut. Bldg. & Loan Ass'n, 80 Miss. 31, 31 So. 540, 1902 Miss. LEXIS 314 (Miss. 1902).

2. Possession; receipt of profits or rent.

Nonresident alien mortgagee secured perfect title against mortgagor, where he obtained possession through tenants under invalid sale and held possession and received rents for more than 10 years under claim of title. Scottish American Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666, 1910 Miss. LEXIS 14 (Miss. 1910).

Mortgagee's title complete, either upon obtaining and holding actual possession after condition broken or receiving rents and profits for statutory period; in absence of fraud it is immaterial that only part of mortgagors surrendered possession. Garrett v. Ellis, 98 Miss. 1, 52 So. 451, 1910 Miss. LEXIS 35 (Miss. 1910).

Mortgage by one tenant in common purporting to convey entire estate did not amount to ouster nor start running of statute where possession was not taken thereunder. Scottish-American Mortg. Co. v. Bunckley, 88 Miss. 641, 41 So. 502, 1906 Miss. LEXIS 194 (Miss. 1906).

If the mortgagee buys at a mortgage sale, voidable for irregularities, enters and continues in possession as owner for nearly ten years, with the acquiescence of the mortgagor, the latter is estopped to plead the statute of limitations against the debt or assert the legal title until the status quo is restored. Lucas v. American Freehold Land Mortg. Co., 72 Miss. 366, 16 So. 358, 1894 Miss. LEXIS 82 (Miss. 1894).

In such case the purchaser will be treated as mortgagee in possession, entitled to satisfaction of his debt, but liable to an accounting as to the rents. Lucas v. American Freehold Land Mortg. Co., 72 Miss. 366, 16 So. 358, 1894 Miss. LEXIS 82 (Miss. 1894).

3. Persons entitled to invoke bar.

As a defense to an action by a successor in title to redeem encumbered land from the holder of a trust deed who had purportedly purchased the encumbered land at an invalid trustee's foreclosure sale, and had taken possession of the land and paid the taxes thereon for 24 years, the holder of the trust deed could rely on either Code 1942, § 711, 10-year statute of adverse possession, or this section [Code 1942, § 718], as a mortgagee in possession after a condition broken, notwithstanding Code 1942, § 888, providing in part that an error in the mode of sale such as makes a sale void would not be cured by any statute of limitations, except after the 10-year statute of adverse possession. Gulfport Farm & Pasture Co. v. Hancock Bank, 232 Miss. 289, 98 So. 2d 862, 1957 Miss. LEXIS 474 (Miss. 1957), cert. denied, 358 U.S. 67, 79 S. Ct. 122, 3 L. Ed. 2d 106, 1958 U.S. LEXIS 178 (U.S. 1958).

A nonresident alien mortgagee secured a perfect title against the mortgagor, where he obtained possession through tenants under an invalid sale and held possession for the statutory period under claim of title. Scottish American Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666, 1910 Miss. LEXIS 14 (Miss. 1910).

A husband mortgaged his lands; the mortgagee without foreclosure conveyed to the wife, who thereafter occupied for ten years. She thereby acquired a perfect title. Little v. Teague, 60 Miss. 115, 1882 Miss. LEXIS 17 (Miss. 1882).

4. Rights and interests barred.

A mortgagor who allows a mortgagee or those claiming under him to remain in possession for more than ten years is barred of all equity of redemption. Tuteur v. Brown, 74 Miss. 774, 21 So. 748, 1897 Miss. LEXIS 53 (Miss. 1897).

5. Running of limitation period.

The statutes of limitation do not begin to run against persons in actual or constructive possession of lands until an adverse entry has been made. Trigg v. Trigg, 233 Miss. 84, 101 So. 2d 507, 1958 Miss. LEXIS 360 (Miss. 1958).

Where the father remained in possession of land, which he had conveyed by warranty deed to a son in 1937 allegedly as security for an indebtedness, and exercised complete dominion over the land until his death, and thereafter the father's heirs retained possession of the land and dealt with it as part of the father's estate until 1951, an action by the heirs in 1956 against the son to establish a resulting trust for the benefit of the heirs was not barred by the statutory limitations imposed by this section [Code 1942, § 718] and §§ 709 and 719, Code of 1942. Trigg v. Trigg, 233 Miss. 84, 101 So. 2d 507, 1958 Miss. LEXIS 360 (Miss. 1958).

6. —Acknowledgment of mortgagor's rights.

Acknowledgment of mortgagor's title to land in possession of mortgagee, or right to redeem, in writing signed by mortgagee, or person claiming through him, is only acknowledgment tolling statute of limitation. Cossar v. Grenada Oil Mill, 138 Miss. 890, 103 So. 509, 1925 Miss. LEXIS 92 (Miss. 1925).

7. Laches.

Laches was unavailable as defense to action seeking to set aside deed on grounds that it had been intended to serve as security, and not as conveyance, where persons instituting action acted seasonably under statute. Sweet v. Luster, 513 So. 2d 1240, 1987 Miss. LEXIS 2842 (Miss. 1987).

Suit to redeem from mortgage begun on last day before expiration of statutory time for bringing such suits, not barred by laches. Cox v. American Freehold & Land Mortg. Co., 88 Miss. 88, 40 So. 739, 1906 Miss. LEXIS 130 (Miss. 1906).

RESEARCH REFERENCES

ALR.

Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants. 32 A.L.R.2d 1214.

Mortgages: effect on subordinate lien of redemption by owner or assignee from sale under prior lien. 56 A.L.R.4th 703.

Am. Jur.

3 Am. Jur. 2d, Adverse Possession §§ 188- 191, 192, 213, 217.

55 Am. Jur. 2d, Mortgages §§ 406 et seq.

CJS.

54 C.J.S., Limitations of Actions §§ 51, 64.

59A C.J.S., Mortgages §§ 1424-1428.

§ 15-1-21. Actions on mortgages, deeds of trust, and statutory liens to be brought within time allowed for action upon writing in which debt is specified.

When a mortgage or deed of trust shall be given on real or personal estate, or when a lien shall be given by law, to secure the payment of a sum of money specified in any writing, an action or suit or other proceedings shall not be brought or had upon such lien, mortgage, or deed of trust to recover the sum of money so secured except within the time that may be allowed for the commencement of an action at law upon the writing in which the sum of money secured by such lien, mortgage, or deed of trust may be specified. In all cases where the remedy at law to recover the debt shall be barred, the remedy in equity on the mortgage shall be barred.

HISTORY: Codes, 1857, ch. 57, art. 4; 1871, § 2150; 1880, § 2667; 1892, § 2733; 1906, § 3093; Hemingway's 1917, § 2457; 1930, § 2290; 1942, § 719.

Cross References — Completion of limitation period extinguishing right of action, see § 15-1-3.

Limitation on equity remedy generally, see § 15-1-9.

Effect of payment of mortgage, see § 89-1-49.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Joint debt.
3. Extension of debt.
4. Rights affected.
5. Running of limitation period.
6. Actions or proceedings.
7. Pleading.
8. Estoppel.

1. In general.

An instrument executed by a debtor was an assignment, rather than an equitable mortgage barred by the statute of limitations, where there was no note secured by the mortgage which could be barred by the statute of limitations. Gillis v. Case, 574 So. 2d 692, 1990 Miss. LEXIS 810 (Miss. 1990).

Where the father remained in possession of land, which he had conveyed by warranty deed to a son in 1937 allegedly as security for an indebtedness, and exercised complete dominion over the land until his death, and thereafter the father's heirs retained possession of the land, and dealt with it as part of the father's estate until 1951, an action by the heirs in 1956 against the son to establish a resulting trust for the benefit of the heirs was not barred by the statutory limitations imposed by this section [Code 1942, § 719] and §§ 709 and 718, Code of 1942. Trigg v. Trigg, 233 Miss. 84, 101 So. 2d 507, 1958 Miss. LEXIS 360 (Miss. 1958).

Where in 1931 a deed of trust on certain land was issued to a bank as security for a loan, and later that land was sold at a tax sale and not redeemed, in 1939 the bank's remedy at law to recover the debt was barred by statute of limitations and direct remedy in equity was likewise barred. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

The rule that even where the debt secured by a mortgage is barred by the statute of limitations, the mortgagee cannot be deprived of possession by the mortgagor until the debt is paid does not apply in an action by a bank against the state to quiet title where the rights of the bank under a deed of trust were barred by the statute of limitations at the time the bank acquired a tax forfeited land patent and the patent was void. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

Where the debt is barred the mortgage cannot be enforced. Musser v. First Nat'l Bank, 165 Miss. 873, 147 So. 783, 1933 Miss. LEXIS 311 (Miss. 1933); Hembree v. Johnson, 119 Miss. 204, 80 So. 554, 1918 Miss. LEXIS 26 (Miss. 1918); Maddux v. Jones, 51 Miss. 531, 1875 Miss. LEXIS 75 (Miss. 1875); Huntington v. Heirs of Bobbitt, 46 Miss. 528, 1872 Miss. LEXIS 22 (Miss. 1872).

When secured debt is barred both right and remedy are extinguished. McDaniel v. Short, 127 Miss. 520, 90 So. 186, 1921 Miss. LEXIS 254 (Miss. 1921); Musser v. First Nat'l Bank, 165 Miss. 873, 147 So. 783, 1933 Miss. LEXIS 311 (Miss. 1933).

The statutes of limitation do not begin to run against persons in actual or constructive possession of lands until an adverse entry has been made. Dixon v. Doe, 23 Miss. 84, 1851 Miss. LEXIS 11 (Miss. 1851).

2. Joint debt.

A mortgage of her land by a wife to secure the joint debt of herself and husband will after his death be binding on the land, although her personal liability for the debt in the meantime be barred by limitation, the debt as to his estate not being barred. Bell v. Clark, 71 Miss. 603, 14 So. 318, 1893 Miss. LEXIS 127 (Miss. 1893).

3. Extension of debt.

Where note secured by deed of trust was extended from time to time, but fact of extensions was not noted on margin of record of deed of trust before remedy to enforce it appeared on face of record to be barred, or within six months thereafter, such extensions did not affect rights of subsequent creditors and purchasers for valuable consideration without notice of extensions. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

Where note secured by deed of trust was extended from time to time, but fact of extensions was not noted on margin of record of deed of trust before remedy to enforce it appeared on face of record to be barred, or within six months thereafter, that no cause of action accrued in favor of indorser of note until he paid debt held immaterial as affects rights of subsequent creditors and purchasers without notice. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

Where no effort was made to renew or extend notes or mortgage securing them until after notes were barred, right and remedy as to notes and mortgage were barred, and could not be revived. Musser v. First Nat'l Bank, 165 Miss. 873, 147 So. 783, 1933 Miss. LEXIS 311 (Miss. 1933).

Sale made under deed of trust after original indebtedness barred was valid where creditor entered marginal reference showing note extended, within six months. McBride v. Burgin, 142 Miss. 859, 108 So. 148, 1926 Miss. LEXIS 137 (Miss. 1926).

4. Rights affected.

Section 722, Code of 1942, providing for six-year limitation period when no other period is prescribed, this section [Code 1942, § 719] barring action on mortgage when debt it secures is barred, and § 743, Code of 1942, providing that completion of period of limitation bars action and defeats and extinguishes the right, operate to extinguish on September 1, 1935, deed of trust given to secure note falling due on September 1, 1929, and, in absence of renewal, or institution of foreclosure proceedings, power of sale and all other rights conferred by deed of trust are utterly destroyed on that date. Perkins v. White, 208 Miss. 157, 43 So. 2d 897, 1950 Miss. LEXIS 237 (Miss. 1950).

Where note secured by deed of trust was extended from time to time but the fact of extension was not noted on the margin of the record of the deed of trust before the remedy to enforce it was barred, or within six months thereafter, such extensions did not affect rights of subsequent creditors and purchasers for value without notice of the extensions. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

That junior lien attached before bar of limitations attached to prior deed of trust did not affect right of junior lienor's transferees who purchased for valuable consideration the note and security and had no notice that lien had not been extinguished, and parted with something of value, and hence became "creditors" or "subsequent purchasers" within statute providing that recorded lien should have no effect as to creditors and subsequent purchasers where remedy thereof was barred by limitation. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

Where senior mortgage and notes secured thereby were barred, neither junior mortgagee nor one claiming under him was bound to know any facts not of record, nor estopped to claim priority, not to assert that attempted revival of senior mortgage was void. Musser v. First Nat'l Bank, 165 Miss. 873, 147 So. 783, 1933 Miss. LEXIS 311 (Miss. 1933).

Junior mortgagee cannot redeem from sale under prior mortgage if his debt is barred. Central Trust Co. v. Meridian L. & R. Co., 106 Miss. 431, 63 So. 575, 1913 Miss. LEXIS 132 (Miss. 1913).

5. Running of limitation period.

The limitation period for the enforcement of a deed of trust was not tolled by the fact that the defendant continued to make 74 monthly payments after the balloon payment on the promissory note became due since such payments did not unequivocally acknowledge when the balance was due, to whom the balance was due, and for what the balance was due, and, moreover, such payments did not contain a specification of the debt referred to and a promise to pay a fixed amount. EB, Inc. v. Smith, 757 So. 2d 1017, 2000 Miss. App. LEXIS 92 (Miss. Ct. App. 2000).

Advertisement of sale of property secured by trust deed pursuant to power of sale contained in the deed constitutes "proceeding" brought or had on trust deed, commencement of which tolls statute of limitations. Gates v. Chandler, 174 Miss. 815, 165 So. 442, 1936 Miss. LEXIS 210 (Miss. 1936).

Proceeding for foreclosure of trust deed commenced three days before note secured thereby would become barred by limitations by advertisement in newspaper in the exercise of power of sale contained in the trust deed held not barred by limitations, notwithstanding sale could not have been made before expiration of statutory period. Gates v. Chandler, 174 Miss. 815, 165 So. 442, 1936 Miss. LEXIS 210 (Miss. 1936).

6. Actions or proceedings.

In a dispute involving a promissory note, an issue of which statute of limitations applied was not decided because the creditor never filed suit to foreclose on the note, and the creditor never filed collection on the note. Chimento v. Fuller, 965 So. 2d 668, 2007 Miss. LEXIS 543 (Miss. 2007).

An action in subrogation filed by a credit association which had purchased land under a foreclosure sale under its second deed of trust against the successors in title in January, 1967, to recover the amount which it had paid to the beneficiary of the first deed of trust in June of 1961, in payment of a delinquent payment owed to the beneficiary of the first trust deed by the grantor who had executed the deeds of trusts, was barred by the six-year statute of limitations where the delinquent payment had been due in January of 1961, since the plaintiff credit association acquired no greater rights than those of its subrogor so that when the debt became barred, the plaintiff's right to enforce its remedy in equity on the deed of trust was likewise barred. Meridian Production Credit Asso. v. Edwards, 231 So. 2d 806, 1970 Miss. LEXIS 1614 (Miss. 1970).

The words "action or suit" as used in this section [Code 1942, § 719] cover every proceeding of judicial character by which trust deed may be enforced and words "other proceedings" would be meaningless if restricted to proceedings of a judicial character. Gates v. Chandler, 174 Miss. 815, 165 So. 442, 1936 Miss. LEXIS 210 (Miss. 1936).

This section [Code 1942, § 719] includes "proceeding" to foreclose trust deed by exercise of power of sale contained in deed. Gates v. Chandler, 174 Miss. 815, 165 So. 442, 1936 Miss. LEXIS 210 (Miss. 1936).

Equity, at suit of complainant willing to do equity, will enjoin ejectment on ground sale to complainant was invalid because made by substituted trustee not legally appointed, where complainant had been in possession 8 years and debt had become barred. Wall v. Harris, 90 Miss. 671, 44 So. 36, 1907 Miss. LEXIS 105 (Miss. 1907).

7. Pleading.

In an action by a bank against the state to quiet title where the rights and remedies of the bank under a deed of trust were barred by the statute of limitations at the time the bank acquired a tax forfeited land patent and where the patent was void, the absence of a specific plea of statute of limitations was not defective and the bank was not entitled to quiet title. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

A bill by a mortgagee purchasing at a sale in pais under his mortgage against the mortgagor, filed before the debt was barred, which, though in form to remove clouds from the title, yet presents every allegation necessary to foreclose the mortgage, may be amended upon the mortgagor setting up that the title of the mortgagee was invalid because of defects in the sale, so as to pray for and procure a foreclosure of the mortgage, notwithstanding at the time of such amendment an original bill would be barred. Easter v. Riley, 79 Miss. 625, 31 So. 210, 1901 Miss. LEXIS 107 (Miss. 1901).

8. Estoppel.

The defendant was not equitably estopped from asserting the limitations period in an action to enforce a deed of trust, notwithstanding that he continued to make 74 monthly payments after the balloon payment on the promissory note became due, as there was no evidence that the plaintiff relied on the defendant or that he sought to induce the plaintiff's reliance. EB, Inc. v. Smith, 757 So. 2d 1017, 2000 Miss. App. LEXIS 92 (Miss. Ct. App. 2000).

RESEARCH REFERENCES

Am. Jur.
55 Am. Jur. 2d, Mortgages § 618.

CJS.
54 C.J.S., Limitations of Actions §§ 51, 63, 64.

Law Reviews.
The effect of bankruptcy and encumbrances on mineral interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 15-1-23. Limitations applicable to suits or actions on installment notes following foreclosure or sale of property pledged as security therefor.

In all cases, no suit or action shall hereafter be commenced or brought upon any installment note, or series of notes of three or more, whether due or not, where said note or notes are secured by mortgage, deed of trust, or otherwise, upon any property, real or personal, unless the same is commenced or brought within one year from the date of the foreclosure or sale of the property pledged as security for said note or notes.

HISTORY: Codes, 1942, § 720; Laws, 1934, ch. 251.

Cross References — Exception for notes or evidences of debt issued by bank or moneyed corporation, see § 15-1-79.

JUDICIAL DECISIONS

1. In general.

The most reasonable interpretation of the statute was that the sale of all property securing a note had to be completed to trigger the statute of limitations; accordingly, where the notes' cross-collateralization clause ensured that all eight notes were secured by all eight trucks, the statutory one-year limitations period began only after the creditor sold all the trucks, and thus, the creditor's suit seeking a deficiency judgment was timely filed. Volvo Fin. Servs. v. Williamson, 910 F.3d 208, 2018 U.S. App. LEXIS 34290 (5th Cir. Miss. 2018).

The emphasis of the one-year statute of limitations for actions brought against "any installment note" under § 15-1-23, is on notes secured by a mortgage or deed of trust which has been foreclosed. The import of the statute's language, "upon any installment note, or a series of notes three or more, whether due or not," is that the statute of limitations begins to run after the foreclosure and not on the due date of any portion of the note or the due date of any note of a series of 3 or more. Rankin County Bank v. McKinion, 531 So. 2d 822, 1988 Miss. LEXIS 490 (Miss. 1988).

Mississippi Code § 15-1-23 operated to bar action to recover deficiency judgment from defendant after plaintiff's repossession and sale of collateral pledged on installment note, and court rejected plaintiff's argument that § 15-1-49 should apply, where maker of note was not same party who granted security interest; court also rejected argument that statute was in direct conflict with cumulative remedy concept provided in Uniform Commercial Code since plaintiff was not precluded from exercising its cumulative remedies as long as it did so in timely manner. Commercial Agency v. Loe, 667 F. Supp. 359, 1987 U.S. Dist. LEXIS 7715 (S.D. Miss. 1987).

Code § 15-1-49, rather than § 15-1-23, applied in an action by a bank for a deficiency judgment on an instrument guaranteeing payment of a secured note. First Nat'l Bank v. Drummond, 686 F.2d 1117, 1982 U.S. App. LEXIS 25292 (5th Cir. Miss. 1982).

In an action on a guaranty contract, the general six-year statute of limitations Code § 15-1-49 would be applied rather than the one-year statute of limitations regarding actions following the foreclosure of an installment note. First Nat'l Bank v. Drummond, 419 So. 2d 154, 1982 Miss. LEXIS 2123 (Miss. 1982).

The words "series of notes" as employed in this section, mean multiple notes given in a single transaction and for the same consideration, and without regard for their several maturity dates. Thus, in an action by a bank against the makers and endorsers of a note in the amount of $300,000, the trial court erred in dismissing the action upon a plea of the statute of limitations where the action involved two separate notes of $150,000 each given at different times and two other notes, one for $150,000 to renew the first note and one for $300,000 to renew and consolidate both original notes. Peoples Bank & Trust Co. v. Kinsey, 385 So. 2d 615, 1980 Miss. LEXIS 2026 (Miss. 1980).

This section [Code 1942, § 720] was not applicable to an action which involved only two notes, neither of which was an installment note. Rivervalley Co. v. Deposit Guaranty Nat'l Bank, 331 F. Supp. 698, 1971 U.S. Dist. LEXIS 12606 (N.D. Miss. 1971).

A replevin action asserted by a vendor under a conditional sales contract is not a foreclosure and thus does not set the one year statute of limitations in motion. Paul O'Leary Lumber Corp. v. Mill Equipment, Inc., 332 F. Supp. 1144, 1970 U.S. Dist. LEXIS 11009 (S.D. Miss. 1970), aff'd, 448 F.2d 536, 1971 U.S. App. LEXIS 8001 (5th Cir. Miss. 1971).

A suit for a deficiency judgment on a promissory note instituted more than one year after the date of the sale of the property securing the same was barred by this section [Code 1942, § 720]. Guthrie v. Merchants Nat'l Bank, 254 Miss. 532, 180 So. 2d 309, 1965 Miss. LEXIS 964 (Miss. 1965).

The fact that the contract from which the suit for a deficiency judgment arose was executed in another state by residents of that state and that the subject property was located there was immaterial; for the lex fori controlled rather than lex loci contractus, and the applicable limitations statute was that of Mississippi. Guthrie v. Merchants Nat'l Bank, 254 Miss. 532, 180 So. 2d 309, 1965 Miss. LEXIS 964 (Miss. 1965).

This section [Code 1942, § 720] is not applicable to bar an action to collect on a deficiency judgment where the judgment was obtained before the passage of this act and the case involved an action based on that judgment and not upon a note. Roebke v. Love, 186 Miss. 609, 191 So. 122, 1939 Miss. LEXIS 238 (Miss. 1939).

The purpose of this section [Code 1942, § 720] was to alleviate distressed mortgage debtors and to discourage foreclosure of mortgages during the depression. Lewis v. Simpson, 176 Miss. 123, 167 So. 780, 1936 Miss. LEXIS 115 (Miss. 1936).

This section [Code 1942, § 720] is applicable only to suit on note secured by mortgage which has been foreclosed and is not applicable to suit on a note secured by another mortgage on the same realty which has not been foreclosed. Lewis v. Simpson, 176 Miss. 123, 167 So. 780, 1936 Miss. LEXIS 115 (Miss. 1936).

RESEARCH REFERENCES

ALR.

Redemption rights of vender defaulting under executory land sales contract after foreclosure sale or foreclosure decree enforcing vendor's lien or rights. 51 A.L.R.2d 672.

Priorty as between vendor's lien and mortgage or deed of trust to third person furnishing purchase money. 55 A.L.R.2d 1119.

Am. Jur.

55 Am. Jur. 2d, Mortgages §§ 696 et seq.

CJS.

59A C.J.S., Mortgages §§ 1260, 1261, 1266, 1281 et seq.

§ 15-1-25. Limitations applicable to action or scire facias against executor or administrator.

An action or scire facias may not be brought against any executor or administrator upon any judgment or other cause of action against his testator or intestate, except within four years after the qualification of such executor or administrator.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art 6 (12); 1857, ch. 57, art. 11; 1871, § 2155; 1880, § 2676; 1892, § 2745; 1906, § 3105; Hemingway's 1917, § 2469; 1930, § 2295; 1942, § 725.

Cross References — Limitations on actions in setoff, see § 15-1-71.

Limitation of action on sales contracts, see § 75-2-725.

Suits on contractor's bond, see § 85-7-189.

Actions which survive against executor or administrator, see § 91-7-235.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Claims subject to bar.
3. Application to guardians.
4. Computation of limitation period.
5. —Effect of change, resignation, etc., of executor or administrator.

1. In general.

Section 15-1-25, which specifically states that a suit against an executor or administrator must be filed within 4 years of the qualification of the executor or administrator, is an example of the legislature carving out a specific statute of limitations period in order to preempt the general 6-year limitations, and therefore the specific statute of § 15-1-25 preempts the general statute of § 15-1-49. Townsend v. Estate of Gilbert, 616 So. 2d 333, 1993 Miss. LEXIS 112 (Miss. 1993).

Section 15-1-25 is not unconstitutional as violative of equal protection in that it provides only 4 years in which to file a claim against an estate while other tort victims have the benefit of the general 6-year statute of limitations, since the legislature's interest in finality with respect to estates is a legitimate governmental interest and the statute of limitations is a rational means of serving that specific interest. Townsend v. Estate of Gilbert, 616 So. 2d 333, 1993 Miss. LEXIS 112 (Miss. 1993).

Statutes of limitation are remedial in their nature and are to be construed liberally. First Nat'l Bank & Trust Co. v. Landau, 183 Miss. 651, 184 So. 618, 1938 Miss. LEXIS 278 (Miss. 1938).

This section [Code 1942, § 725] is the only limitation applicable to claims probated and registered which were not barred at time. Duffy v. Kilroe, 116 Miss. 7, 76 So. 681, 1917 Miss. LEXIS 281 (Miss. 1917).

The statute [Code 1942, § 725] runs without regard to the publication for creditors to probate their claims. Sivley v. Summers, 57 Miss. 712, 1880 Miss. LEXIS 44 (Miss. 1880).

2. Claims subject to bar.

This section [Code 1942, § 725], and not the one-year period fixed by Code 1942, § 610, governs an action against an estate for decedent's negligence. Jones v. Evans, 247 Miss. 285, 156 So. 2d 742, 1963 Miss. LEXIS 299 (Miss. 1963).

This section [Code 1942, § 725] governs the personal actions which survive under Code 1942, § 610. Powell v. Buchanan, 245 Miss. 4, 147 So. 2d 110, 1962 Miss. LEXIS 526 (Miss. 1962).

Statute of limitations, whether general or special, does not run in favor of executor or administrator with respect to claims for legacies or distributive shares until there is a final settlement or at least a disavowal of the trust. Bailey v. Sayle, 206

Miss. 757, 40 So. 2d 618, 1949 Miss. LEXIS 298 (Miss. 1949).

Legatee's suit for accounting, brought more than 27 years after testatrix' death, was not barred by statute of limitations as against executor named in will, who took charge of estate without issuance of letters or notice to creditors and who had never filed any inventory, report, account, or other paper or pleading in court, and had never been discharged from his trust. Bailey v. Sayle, 206 Miss. 757, 40 So. 2d 618, 1949 Miss. LEXIS 298 (Miss. 1949).

The section [Code 1942, § 725] does not apply to causes of action which accrue after the death of the decedent. Tom E. Taylor Undertaking Co. v. Smith's Estate, 183 Miss. 45, 183 So. 391, 1938 Miss. LEXIS 214 (Miss. 1938); Sivley v. Summers, 57 Miss. 712, 1880 Miss. LEXIS 44 (Miss. 1880); Buckingham v. Walker, 48 Miss. 609, 1873 Miss. LEXIS 84 (Miss. 1873); MCLEAN v. RAGSDALE, 31 Miss. 701, 1856 Miss. LEXIS 142 (Miss. 1856); Pope v. Bowman, 27 Miss. 194, 1854 Miss. LEXIS 30 (Miss. 1854); Bingaman v. Robertson, 25 Miss. 501, 1853 Miss. LEXIS 21 (Miss. 1853).

A proceeding to subject a decedent's estate to the payment of the balance due on funeral expenses is not barred by the four-year statute of limitations, since such statute applies only to obligations incurred by the decedent in his lifetime, and the statute of limitations does not run against funeral expenses which are a part of the cost of the administration of the estate as long as the estate is open. Tom E. Taylor Undertaking Co. v. Smith's Estate, 183 Miss. 45, 183 So. 391, 1938 Miss. LEXIS 214 (Miss. 1938).

Administrator's claim against estate not barred by limitation where duly probated and not barred at time of appointment. Oliver v. Smith, 94 Miss. 879, 49 So. 1, 1909 Miss. LEXIS 364 (Miss. 1909).

The statute of limitations does not run in favor of an executor against a legatee until he has finally accounted, even where under the will he was to own the entire estate as long as he remained single, and the legatee's right to the legacy accrued only upon his subsequent marriage. Edwards v. Kelly, 83 Miss. 144, 35 So. 418, 1903 Miss. LEXIS 22 (Miss. 1903).

3. Application to guardians.

This section [Code 1942, § 725] applies to claims against guardians for liability of their wards by virtue of Code 1930, § 1902, Code 1942, § 439. First Nat'l Bank & Trust Co. v. Landau, 183 Miss. 651, 184 So. 618, 1938 Miss. LEXIS 278 (Miss. 1938).

4. Computation of limitation period.

Health care providers' claim against the decedent's estate was time-barred because the four-year statute of limitations began to run ninety days after the executor was issued letters of administration, but the providers did not bring their cause of action until after the expiration of the limitations period. Rush Found. Hosp. v. Carlisle, 269 So. 3d 222, 2018 Miss. App. LEXIS 111 (Miss. Ct. App. 2018).

Statement of claim in a probate proceeding was timely filed because the stay entered by a federal circuit court, prohibiting the creditor from foreclosing on the encumbered property pending the appeal, began the tolling of the filing period as to the promissory note. Avakian v. Wilmington Trust N.A. (In re Estate of Avakian), 231 So. 3d 208, 2017 Miss. App. LEXIS 201 (Miss. Ct. App.), cert. denied, 229 So. 3d 122, 2017 Miss. LEXIS 492 (Miss. 2017).

In a wrongful death action against the administrator of an estate, the 4-year limitations period set forth in § 15-1-25 began to run 90 days after the letters of administration were issued since § 91-7-239 provides that a suit cannot be filed against an executor or administrator until after 90 days following the issuance of the letters of administration. Townsend v. Estate of Gilbert, 616 So. 2d 333, 1993 Miss. LEXIS 112 (Miss. 1993).

In a wrongful death action against the administrator of an estate arising from an automobile accident, the 4-year limitations period set forth in § 15-1-25 was not tolled pursuant to § 15-1-57 during the time that another suit stemming from the same accident was on direct appeal to the Supreme Court from an order granting a directed verdict where the plaintiff in the wrongful death action was not a party to the second suit, and did not have any involvement with it except that the plaintiff's decedent had been riding in the same automobile as the plaintiff's decedent in the second lawsuit; the order granting the directed verdict in the second case in no way prevented the plaintiff from filing his wrongful death cause of action. Townsend v. Estate of Gilbert, 616 So. 2d 333, 1993 Miss. LEXIS 112 (Miss. 1993).

Statute allows four years and six months within which an executor or administrator can be sued. Toler v. Wells, 158 Miss. 628, 130 So. 298, 1930 Miss. LEXIS 50 (Miss. 1930).

Where administrator was appointed and letters of administration were issued November 17, 1922, action could not be maintained against administrator after May 17, 1927. Toler v. Wells, 158 Miss. 628, 130 So. 298, 1930 Miss. LEXIS 50 (Miss. 1930).

Claims against estate which matured before decedent's death are barred, not withstanding probate, by failure to sue thereon within 4 years and 6 months from grant of letters. Rogers v. Rosenstock, 117 Miss. 144, 77 So. 958, 1918 Miss. LEXIS 158 (Miss. 1918).

Claim for medical services rendered during last illness not barred until 4 years and 6 months after grant of letters. Hardenstein v. Brien, 96 Miss. 493, 50 So. 979, 1910 Miss. LEXIS 152 (Miss. 1910).

The period within which executors and administrators cannot be sued as provided by statute pertaining specifically to executors and administrators (Code 1942, § 612) should not be computed as part of the time. Wilkinson v. Moore, 27 Miss. 365, 1854 Miss. LEXIS 59 (Miss. 1854); West F. R. Co. v. Stockett, 21 Miss. 395, 1850 Miss. LEXIS 35 (Miss. 1850); Jennings v. Love, 24 Miss. 249, 1852 Miss. LEXIS 51 (Miss. 1852).

5. —Effect of change, resignation, etc., of executor or administrator.

In a wrongful death action against the administrator of an estate, the 4-year limitations period provided in § 15-1-25 did not run from the appointment of the second administrator of the estate since the statute of limitations runs from the original grant of the letters of administration regardless of whether subsequent administrators are named. Townsend v. Estate of Gilbert, 616 So. 2d 333, 1993 Miss. LEXIS 112 (Miss. 1993).

The statute [Code 1942, § 725] begins to run on the qualification of the administrator, and is not stopped by his subsequent resignation. Champion v. Cayce, 54 Miss. 695, 1877 Miss. LEXIS 83 (Miss. 1877).

The statute [Code 1942, § 725] applies if four years have elapsed since the original grant of letters upon the estate, even if the particular administrator or executor who is sued has not been so long in office. Boyd v. Lowry, 53 Miss. 352, 1876 Miss. LEXIS 77 (Miss. 1876).

RESEARCH REFERENCES

ALR.

Running of statute of limitations as affected by doctrine of relation back of appointment of administrator. 3 A.L.R.3d 1234.

Fiduciary or confidential relationship as affecting estoppel to plead statute of limitations. 45 A.L.R.3d 630.

Am. Jur.

1 Am. Jur. 2d, Accounts and Accounting §§ 14 et seq., 58.

31 Am. Jur. 2d, Executors and Administrators § 769.

4 Am. Jur. Trials, Statutes of Limitation § 26.

CJS.

1 C.J.S., Account, Action on §§ 14, 16.

34 C.J.S., Executors and Administrators §§ 893-917.

§ 15-1-27. Limitations applicable to action by ward against guardian or surety.

All actions against a guardian and the sureties on his bond, or either of them, by the ward, shall be commenced within five years next after the ward shall have arrived at the age of twenty-one years, and not after.

HISTORY: Codes, 1892, § 2738; 1906, § 3098; Hemingway's 1917, § 2462; 1930, § 2296; 1942, § 726.

Cross References — Effect of running of limitations against guardian, see § 15-1-53.

Guardian's bond, see § 93-13-17.

Final account and settlement by guardian, see § 93-13-77.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.

1. In general.

Statute of limitations did not prevent the chancery court from correcting a fraud upon the court because a guardian's initiation of a suit to reopen the guardianship in order to investigate an attorney and determine the whereabouts of guardianship money was sufficient to toll the statutes of limitations; the guardian's petition to reopen the guardianship and to be reappointed the guardian was also an act by the ward since it was on his behalf, and i twas filed within the five-year period. In re Guardianship of McClinton, 157 So. 3d 862, 2015 Miss. App. LEXIS 44 (Miss. Ct. App. 2015).

Statute [Code 1942, § 726] does not begin to run against suits on guardian's bond until final settlement of his trust. Pattison v. Clingan, 93 Miss. 310, 47 So. 503 (Miss. 1908).

2. Applicability.

After a guardianship account was drained, the twenty-four-year-old ward sued the bank for breaching its duty by allowing the funds on deposit to be converted without a court order; the claim was barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49, because it was not filed three years after he turned twenty-one. The bank was not a surety; therefore, Miss. Code Ann. § 15-1-27 was not the applicable statute of limitations. Williams v. Duckett (In re Duckett), 991 So. 2d 1165, 2008 Miss. LEXIS 307 (Miss. 2008).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Guardian and Ward §§ 137, 140.

CJS.

39 C.J.S. Guardian and Ward §§ 254, 259.

§ 15-1-29. Limitations applicable to actions on accounts and unwritten contracts.

Except as otherwise provided in the Uniform Commercial Code, actions on an open account or account stated not acknowledged in writing, signed by the debtor, and on any unwritten contract, express or implied, shall be commenced within three (3) years next after the cause of such action accrued, and not after, except that an action based on an unwritten contract of employment shall be commenced within one (1) year next after the cause of such action accrued, and not after.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art 6 (10); 1857, ch. 57, art. 5; 1871, § 2151; 1880, § 2670; 1892 § 2739; 1906, § 3099; Hemingway's 1917, § 2463; 1930, § 2299; 1942, § 729; Laws, 1964, ch. 299; Laws, 1966, ch. 316, § 10-105; Laws, 1976, ch. 488, § 1, eff from and after July 1, 1976.

Cross References — When statute commences to run on open accounts, see § 15-1-31.

JUDICIAL DECISIONS

ANALYSIS

1. Contracts in general.
2. Contracts in writing.
3. Unwritten contracts, generally.
4. — Involving employment.
5. —Involving attorneys.
6. —Miscellaneous cases.
7. Implied contract.
8. Accounts.
9. —Acknowledgments.
10. Evidence.
11. Pleading.
12. Running of limitation period.
13. — Accrual of cause of action.
14. —New cause of action.
15. Miscellaneous.

1. Contracts in general.

Section 15-1-49, rather than this section, applies to contracts for professional services. Law Firm of Logan & Bise v. Stewart (In re Estate of Stewart), 732 So. 2d 255, 1999 Miss. LEXIS 81 (Miss. 1999).

Where plaintiff, recipient of certain scholarship funds as financial assistance for medical school costs and tuition, was required to fulfill 4 year service obligation at approved health care facility, and signed private practice assignment agreement with health care facility, with such agreement stating that it would be "negotiable at the end of one year", and accepted employment there, but was terminated 10 months later with the termination being memorialized as a nonrenewal of employment agreement, § 15-1-35 was not applicable to portion of complaint alleging termination of his employment, rather appropriate provision was "catch all" statute of limitations § 15-1-49. Robinson v. Coastal Family Health Center, Inc., 756 F. Supp. 958, 1990 U.S. Dist. LEXIS 18728 (S.D. Miss. 1990).

In a probate proceeding based upon an oral contract whereby the decedent promised to bequeath to the claimant a parcel of real property in return for a loan of $11,000, the cause of action for breach of the oral contract arising out of the failure of the will to be admitted to probate did not arise until the death of the decedent; therefore, where the claim for probate was filed within three months of the decedent's death, it was not barred by the three-year statute of limitations for all contracts set forth in § 15-1-29. Estate of McKellar v. Brown, 404 So. 2d 550, 1981 Miss. LEXIS 2229 (Miss. 1981).

In an employment discrimination action pursuant to 42 USCS § 1981, the general six-year statute of limitations provided by § 15-1-49 rather than the contractual three-year statute of limitations provided by § 15-1-29 would be applicable even though a mere claim for back pay would ordinarily be governed by the three-year statute. Walton v. Utility Products, Inc., 424 F. Supp. 1145, 1976 U.S. Dist. LEXIS 13379 (N.D. Miss. 1976).

Where the action was one either in tort or for a wrongful breach of duty in a suit on a letter agreement, the three-year limitations statute applicable to open accounts did not apply, and the action was governed by the six-year statute of limitations. Bentz v. Vardaman Mfg. Co., 210 So. 2d 35, 1968 Miss. LEXIS 1491 (Miss. 1968).

This statute [Code 1942, § 729] is applicable as the law of the forum to an action in a Mississippi Federal court against a citizen of Mississippi on a contract for services in Mississippi to be paid for in Louisiana. Le Mieux Bros. Corp. v. Armstrong, 91 F.2d 445, 1937 U.S. App. LEXIS 4253 (5th Cir. Miss. 1937).

To take a case out of the application of this statute [Code 1942, § 729] there must be a writing evidencing an acknowledgment of indebtedness, or promising to pay, in such terms as to render any supplemental evidence unnecessary. First Nat'l Bank v. Johnson, 177 Miss. 634, 171 So. 11, 1936 Miss. LEXIS 268 (Miss. 1936); Blount v. Miller, 172 Miss. 492, 160 So. 598, 1935 Miss. LEXIS 157 (Miss. 1935); Federal Land Bank v. Collins, 156 Miss. 893, 127 So. 570, 1930 Miss. LEXIS 233 (Miss. 1930); Foote v. Farmer, 71 Miss. 148, 14 So. 445, 1893 Miss. LEXIS 170 (Miss. 1893).

This section [Code 1942, § 729] applies alone to actions on open or stated account not acknowledged in writing, signed by debtor, and on unwritten contracts. Blodgett v. Pearl River County, 134 Miss. 816, 98 So. 227, 1923 Miss. LEXIS 233 (Miss. 1923).

The statute [Code 1942, § 729] relates only to actions founded on contract, express or implied. Adams v. Illinois C. R. Co., 71 Miss. 752, 15 So. 640, 1894 Miss. LEXIS 54 (Miss. 1894).

2. Contracts in writing.

Although it would not disaffirm employment-at-will status, the hiring information section of the plaintiff's employment application contained sufficient information for the document to constitute a writing for purposes of the statute of limitations where that section, which was completed after the plaintiff was hired, clearly established her rate of pay, her position, her start date, and her work hours. Levens v. Campbell, 733 So. 2d 753, 1999 Miss. LEXIS 32 (Miss. 1999).

A store's setoff counterclaim against the shopping mall in which it was located was not barred by the 3-year statute of limitations set forth in § 15-1-29 where the store's setoff defense was based on allegedly fraudulent overcharges made by the mall which implied an action arising under the lease between the store and the mall, and therefore the store's fraud claim was subject to § 15-1-49's 6-year limitation period for an action on a written contract. Singing River Mall Co. v. Mark Fields, Inc., 599 So. 2d 938, 1992 Miss. LEXIS 135 (Miss. 1992).

Where under a sales representative agreement with a manufacturer, the manufacturer was to pay commissions on specified sliding scale for orders up to $250,000 and special commission allowances were to be established by the manufacturer for jobs greater than that amount, the 6-year statute of limitations governing obligations on written contracts was applicable rather than the 3-year statute governing actions on open account, notwithstanding that parol testimony was necessary to establish the amount due. Beacham v. Beacham, 243 So. 2d 62, 1971 Miss. LEXIS 1505 (Miss. 1971).

While the 3-year statute of limitations applies to oral and implied contracts, the statute has no application where an implied warranty arises out of and accrues from a written contract between the parties. Paul O'Leary Lumber Corp. v. Mill Equipment, Inc., 332 F. Supp. 1144, 1970 U.S. Dist. LEXIS 11009 (S.D. Miss. 1970), aff'd, 448 F.2d 536, 1971 U.S. App. LEXIS 8001 (5th Cir. Miss. 1971).

Action by seller against buyer on written order signed by buyer's president and seller's salesman which gives accurate description of goods purchased, price and terms of sale, stipulates that all special terms must be incorporated in order and duplicate to be recognized and order is not subject to countermand, and under which goods were shipped and accepted by buyer, is controlled by six-year statute of limitations, § 722, Code of 1942, and not by three-year statute of limitations. Dixie Pine Products Co. v. Universal Refining Products Co., 208 Miss. 45, 43 So. 2d 752, 1949 Miss. LEXIS 406 (Miss. 1949).

An action for restitution of money deposited in connection with a bid submitted for construction of a municipal sewage system and thereafter attempted to be withdrawn because of a mistake in the calculation thereof, was not taken out of the operation of the statute by a written notice of withdrawal which failed to state in writing the character of the mistake made. City of Hattiesburg v. Cobb Bros. Const. Co., 183 Miss. 482, 184 So. 630, 1938 Miss. LEXIS 260 (Miss. 1938).

A trainman's action against railroad for damages for wrongful discharge contrary to contract between railroad and trainman's union was based on written contract with union rather than on verbal contract of employment, and hence was subject to six-year rather than to three-year statute of limitations. Moore v. Illinois C. R. Co., 180 Miss. 276, 176 So. 593, 1937 Miss. LEXIS 92 (Miss. 1937).

Six-year period of limitations applicable to all actions for which no other period is prescribed held applicable to action against stockholders of insolvent bank for their double liability, and not three-year period applicable to actions on unwritten contracts, since double liability of a stockholder is provable by writing, and therefore is not an implied contract, but written contract with an implied promise to pay. Rather v. Moore, 179 Miss. 78, 173 So. 664, 1937 Miss. LEXIS 8 (Miss. 1937).

Three-year statute of limitations would not be applicable to action against stockholders of insolvent State bank for their double liability, even if such liability is statutory, since liability is not a "penalty" and hence six-year statute would apply. Rather v. Moore, 179 Miss. 78, 173 So. 664, 1937 Miss. LEXIS 8 (Miss. 1937).

Orders for funeral supplies setting forth description of goods purchased, price, and terms of sale, held "contracts provable by writing" upon acceptance by seller, so that action thereon, which was commenced within six years from maturity of items, was not barred by statute of limitations governing contracts not provable by writing. Champion Chemical Co. v. Hank, 174 Miss. 732, 165 So. 807, 1936 Miss. LEXIS 224 (Miss. 1936).

Written contract of guaranty, not setting out amount of indebtedness, is governed by six-year statute of limitations. W. T. Raleigh Co. v. Fortenberry, 138 Miss. 410, 103 So. 227, 1925 Miss. LEXIS 101 (Miss. 1925).

Action for loss of cotton seed is one on written contract although bill of lading did not specify amount to be transported. Illinois C. R. Co. v. Jackson Oil & Refining Co., 111 Miss. 320, 71 So. 568, 1916 Miss. LEXIS 296 (Miss. 1916).

The three-year statute is inapplicable to action on written contract. Vicksburg Waterworks Co. v. Yazoo & M. V. R. Co., 102 Miss. 504, 59 So. 825, 1912 Miss. LEXIS 81 (Miss. 1912).

A cause of action evidenced by a writing acknowledging a debt is not barred by this statute [Code 1942, § 729]. Cock v. Abernathy, 77 Miss. 872, 28 So. 18, 1900 Miss. LEXIS 47 (Miss. 1900).

Where a vendor sells for part cash, and part to be paid in installments, reserving a lien as security, the right of action arises upon a contract provable by a writing, whether the vendor proceeds on the promise contained in the deed or that implied by the acceptance of the deed, and this statute [Code 1942, § 729] does not apply. Washington v. Soria, 73 Miss. 665, 19 So. 485, 1896 Miss. LEXIS 190 (Miss. 1896).

3. Unwritten contracts, generally.

This section bars any claim as to alleged unwritten 4 year contract brought by one of the parties. Robinson v. Coastal Family Health Center, Inc., 756 F. Supp. 958, 1990 U.S. Dist. LEXIS 18728 (S.D. Miss. 1990).

If oral promise to devise land was not binding promisee could recover value of services performed and money advanced under agreement. Carter v. Witherspoon, 156 Miss. 597, 126 So. 388, 1930 Miss. LEXIS 193 (Miss. 1930).

Contract held unwritten one within 3-year statute of limitations. Attala Warehouse & Compress Co. v. J. N. Alexander Mercantile Co., 139 Miss. 615, 102 So. 779, 1925 Miss. LEXIS 116 (Miss. 1925).

Three-year statute bars claim for board against estate of decedent. Loviza v. Lynch, 115 Miss. 694, 76 So. 629, 1917 Miss. LEXIS 251 (Miss. 1917).

4. — Involving employment.

County court properly granted a town's motion for a directed verdict in a town marshal's complaint for unpaid salary compensation because the action was barred by the one-year statute of limitations for oral contracts where the minutes of a town meeting did not fully address the duties, obligations, and rate of pay for the position. Vance v. Town of Lula, 135 So. 3d 924, 2013 Miss. App. LEXIS 821 (Miss. Ct. App. 2013).

Under the statute of limitations governing claims based on unwritten contracts, Miss. Code Ann. 15-1-29, the former employee had until March 2, 2007, one year from the date of his termination on March 2, 2006, to file his wrongful termination claim against his former employer, a manager, and a store services company. Because he did not file his claim until March 5, 2007, it was barred by the one-year limitations period in § 15-1-29. Davis v. Belk Stores Servs., 2009 U.S. Dist. LEXIS 487 (S.D. Miss. Jan. 6, 2009).

One-year statute of limitation in Miss. Code Ann. § 15-1-29 applied to the former employee's wrongful termination claim against his former employer, a manager, and a store services company (defendants) since the employee did not allege that he had a written contract of employment, and there was no proof that the employment relationship between the employee and defendants was other than an unwritten contract. Davis v. Belk Stores Servs., 2009 U.S. Dist. LEXIS 487 (S.D. Miss. Jan. 6, 2009).

Even if an employee's quantum meruit claim was not barred due to the existence of his unwritten employment contract, the claim was barred under the one-year statute of limitations in Miss. Code Ann. § 15-1-29 where the latest date upon which the employee's claim could have accrued, which was when additional projects were awarded to the employer, presumably because of the employee's good performance on the first project, was more than a year before the employee filed suit. United States ex rel. Shannon v. Fed. Ins. Co., 2006 U.S. Dist. LEXIS 56509 (S.D. Miss. Aug. 11, 2006), aff'd, 251 Fed. Appx. 269, 2007 U.S. App. LEXIS 21133 (5th Cir. Miss. 2007).

The defendant's claim regarding an adjustment of retirement account funds that were in the plaintiff's name, made in the context of an action to dissolve two corporations, sounded on an unwritten contract for employment. Hall v. Dillard, 739 So. 2d 383, 1999 Miss. App. LEXIS 157 (Miss. Ct. App. 1999).

The phrase "actions on unwritten contracts of employment" in § 15-1-29 applies only to traditional employer-employee situations as opposed to contracts for professional services. Michael S. Fawer v. Evans, 627 So. 2d 829, 1993 Miss. LEXIS 533 (Miss. 1993).

Claim of plaintiff, who was discharged from employment on August 17, 1988, and did not file complaint until December 18, 1990, that defendant breached express or implied oral contract of employment, was barred by statute of limitations. Watkins v. United Parcel Service, Inc., 797 F. Supp. 1349, 1992 U.S. Dist. LEXIS 10394 (S.D. Miss.), aff'd, 979 F.2d 1535, 1992 U.S. App. LEXIS 32025 (5th Cir. Miss. 1992).

The presentation of an employee handbook to an employee some 4 or 5 months after the date of employment did not make the employment agreement a written contract and, where the action for breach of the employment agreement was not filed until more than one year after termination of employment, the action was barred. Sloan v. Taylor Machinery Co., 501 So. 2d 409, 1987 Miss. LEXIS 2269 (Miss. 1987).

Mississippi's one-year statute of limitations for unwritten contracts of employment (Miss Code § 15-1-29) applied to bar an action alleging discriminatory terminations brought under 42 USCS § 1981. White v. United Parcel Service, 692 F.2d 1, 1982 U.S. App. LEXIS 23892 (5th Cir. Miss. 1982), cert. denied, 464 U.S. 860, 104 S. Ct. 186, 78 L. Ed. 2d 165, 1983 U.S. LEXIS 1670 (U.S. 1983).

This section provides the most appropriate state statute of limitations for an employment discrimination cause of action under 42 USCS § 1981, and any such suit must thus be filed within one year after the cause of action has accrued. Jordan v. Lewis Grocer Co., 467 F. Supp. 113, 1979 U.S. Dist. LEXIS 13478 (N.D. Miss. 1979).

The maximum period of recovery of monetary damages for back wages or other damages in an employment discrimination action brought under 42 USCS §§ 1981 and 1982 was three years prior to the filing of suit, by virtue of this section's limitations period on unwritten contracts. Williams v. Yazoo Valley-Minter City Oil Mill, Inc., 469 F. Supp. 37, 1978 U.S. Dist. LEXIS 14202 (N.D. Miss. 1978).

5. —Involving attorneys.

An attorney's action against his or her client for fees for professional legal services rendered by the attorney to the client on open account pursuant to an unwritten agreement is subject to the 3-year limitations period prescribed by § 15-1-29 for actions on an open account or any unwritten contract, not the one-year limitation period prescribed by the same statute for actions based on an unwritten contract of employment. Michael S. Fawer v. Evans, 627 So. 2d 829, 1993 Miss. LEXIS 533 (Miss. 1993).

In legal malpractice action against attorney who delayed in asserting federal tort claim until relevant limitations period had expired, fact that claim arose by virtue of oral contract securing attorney's services did not preclude application of 6 year statute of limitations governing torts, rather than 3 year statute of limitations governing contracts. Hickox ex rel. Hickox v. Holleman, 502 So. 2d 626, 1987 Miss. LEXIS 2282 (Miss. 1987).

In a malpractice action against an attorney resulting from his issuance of defective title certificates, the six-year general statute of limitations under § 15-1-49 was applicable, rather than the three-year statute of limitations governing actions on unwritten contracts under § 15-1-29. United Cos. Mortg., Inc. v. Jones, 465 So. 2d 1083, 1985 Miss. LEXIS 1988 (Miss. 1985).

6. —Miscellaneous cases.

Whether lender's claims were founded upon unwritten contracts, making them subject to the three-year limitations of Miss. Code Ann. § 15-1-29, or whether they fell within the general three- year limitations of Miss. Code Ann. § 15-1-49, the result was the same where (i) the last payment made upon the loans was in March 2001, (ii) the action to collect on the delinquent loans was filed in January 2005, (iii) the action to collect on the delinquent loans was filed approximately three years and ten months from the date of default, and (iv) the fact that the lender was fully aware that no payments were being made on these delinquent loans between March 2001 and January 2005 was beyond debate; thus, the claims were time-barred. Morgan v. Stevens, 989 So. 2d 482, 2008 Miss. App. LEXIS 489 (Miss. Ct. App. 2008).

An oral contract which provided that all the assets of one corporation would be transferred to a second corporation in return for which the second corporation would employ the two stockholders of the first corporation until 1983 or, if said stockholders were involuntarily terminated prior to that time, would pay to them two and one-half times the "annualized" commissions on the accounts which had been transferred by the first corporation was not a contract of employment and the trial court therefore erred in dismissing the complaint which had been filed by the involuntarily dismissed stockholders more than one year but less than three years after the cause of action accrued. Avery, Shanks & Waltman, Inc. v. Giordano-Kirby Ins. Agency, Inc., 404 So. 2d 1036, 1981 Miss. LEXIS 2238 (Miss. 1981).

Where the complainant waited approximately three years and eight months to bring suit for the recovery of his expenses in constructing a building on the defendant's property under an oral contract, the suit was barred by the three year statute of limitations. Bryan v. Bryan, 323 So. 2d 84, 1975 Miss. LEXIS 1552 (Miss. 1975).

Where it appeared that on the death of one partner, the surviving partner had agreed to hold the shares of two of the decedent's heirs as an active trust for their benefit until demand was made by them for payment of the principal, that all of the parties to the agreement had died and the estate of the surviving partner had been administered, with due notice given to creditors, a bill filed by heirs of the first deceased partner, more than three and one-half years after the death of the surviving partner and after the estate had been administered and the personal property distributed, and without a claim having been presented to the administratrix of his estate, to fix and impose a money decree upon the administratrix and the heirs at law of the surviving partner was barred by the statute relating to limitation of actions on unwritten contracts. Whitaker v. Davenport, 193 Miss. 523, 10 So. 2d 202, 1942 Miss. LEXIS 135 (Miss. 1942).

Action to recover money deposited by bidder for municipal sewer construction contract guaranteeing that it would enter into contract upon acceptance of bid commenced more than three years but less than six years after cause of action arose would be barred by three-year statute of limitations applicable to actions on unwritten contracts only in case of oral withdrawal of bid if written record had been kept of proceedings of city's mayor and commissioners in reference to matter. City of Hattiesburg v. Cobb Bros. Const. Co., 174 Miss. 20, 163 So. 676, 1935 Miss. LEXIS 35 (Miss. 1935).

7. Implied contract.

Law imposed an obligation on the part of the mother to repay her son the $85,000 he expended to pay for her needed care; however, because the son wrote his last check to his mother in November 2009, the implied contract with his mother ended at that time, triggering the three-year statute of limitations, and the ability of the representative of the son's estate to pursue the estate's right to repayment ended after November 2012. Because the representative did not file a claim on behalf of the son's estate until March 2013, the representative waited too late to assert the son's right to repayment. Holmes v. Turner (In re Will & Estate of Holmes), 188 So. 3d 1229, 2015 Miss. App. LEXIS 445 (Miss. Ct. App. 2015), cert. denied, 188 So. 3d 575, 2016 Miss. LEXIS 167 (Miss. 2016).

In order for an implied promise to be outside the operation of this section [Code 1942, § 729], it must be to perform a contract, the terms of which are written. Prince v. Prince, 190 Miss. 309, 200 So. 126, 1941 Miss. LEXIS 48 (Miss. 1941).

An action by an accommodation maker against the maker of a promissory note for reimbursement of payments made on the note is within the purview of this section [Code 1942, § 729], since his rights as against the maker on paying the note were not set out therein but rested on what effect the law would give to such payment and in view of the fact that the payments made by the plaintiff were not provable by any writing but rested in parol. Prince v. Prince, 190 Miss. 309, 200 So. 126, 1941 Miss. LEXIS 48 (Miss. 1941).

In shipper's action for freight charges exceeding those authorized by Railroad Commission, three-year statute applied. Gulf & S. I. R. Co. v. Laurel Oil & Fertilizer Co., 172 Miss. 630, 172 Miss. 634, 158 So. 778, 159 So. 838, 160 So. 564, 1935 Miss. LEXIS 95 (Miss.), amended, 172 Miss. 654, 159 So. 838 (Miss. 1935).

An obligation to repay interest collected upon a usurious agreement is in its nature an implied contract, and suit thereon will be barred within three years after the cause of action accrued. Beck v. Tucker, 147 Miss. 401, 113 So. 209, 1927 Miss. LEXIS 342 (Miss. 1927); Buntyn v. National Mut. Bldg. & Loan Ass'n, 86 Miss. 454, 38 So. 345, 1905 Miss. LEXIS 1 (Miss. 1905).

Suit by buyer of lumber to recover original consideration and freight paid after rescission, on an implied contract, is barred in 3 years. Warren-Godwin Lumber Co. v. Lumber Mineral Co., 120 Miss. 346, 82 So. 257, 1919 Miss. LEXIS 91 (Miss. 1919).

Action by railway to recover freight charges barred in 3 years where writings introduced only showed amount collected from defendant as being less than what law imposed, there being only an implied contract for the difference. D. S. Pate Lumber Co. v. Southern R. Co., 115 Miss. 402, 76 So. 481, 1917 Miss. LEXIS 216 (Miss. 1917).

Under former enactment, this section [Code 1942, § 729] was held to apply only to express contracts and was not applicable to implied contracts; accordingly it did not apply to an action against a city to recover money illegally coerced as a privilege tax. Musgrove v. Jackson, 59 Miss. 390, 1882 Miss. LEXIS 123 (Miss. 1882).

8. Accounts.

Where no summons was issued immediately following the filing of a declaration on an open account, and the actual issuance of the summons did not occur until more than three years following the time when a cause of action accrued, the suit was barred by the statute of limitations. Erving's Hatcheries, Inc. v. Garrott, 250 Miss. 701, 168 So. 2d 52, 1964 Miss. LEXIS 490 (Miss. 1964).

Ten-year limitation period of § 709, Code of 1942, applies to a bill to set aside a deed and to hold grantee as trustee of the land for benefit of complainants, neither the three-year limitation period of this section [Code 1942, § 729], nor the six-year period of Code 1942, § 722, being applicable when accounting feature contained in bill is merely incidental. Burton v. Gibbes, 204 Miss. 248, 37 So. 2d 285, 1948 Miss. LEXIS 359 (Miss. 1948).

Items of account for funeral supplies sold by wholesaler for which no written orders were proved, and which matured more than three years before commencement of action thereon, held barred by limitations. Champion Chemical Co. v. Hank, 174 Miss. 732, 165 So. 807, 1936 Miss. LEXIS 224 (Miss. 1936).

Advances of money and supplies made by lessor to lessee constitute an "open account" so as to require action thereon within three years after cause of action accrued, notwithstanding deed of trust given by lessee provided that advancements should be secured by deed, since writing was insufficient to make debt one acknowledged in writing under six-year statute of limitations. Blount v. Miller, 172 Miss. 492, 160 So. 598, 1935 Miss. LEXIS 157 (Miss. 1935).

Open account is an unwritten contract where deed of trust securing same fails to specify a definite debt, and is barred by 3-year statute. Hembree v. Johnson, 119 Miss. 204, 80 So. 554, 1918 Miss. LEXIS 26 (Miss. 1918).

The statute [Code 1942, § 729] does not apply to the claim of a member of the board of supervisors for compensation under § 8 of the Act of 1890 (Laws 1890, c 250), since such claim does not rest in open account, the six-year statute being applicable. Madison County v. Collier, 79 Miss. 220, 87 Miss. 204, 30 So. 610 (Miss. 1905).

A judgment by default in an action upon an open account was taken, shown by the record to be void, the defendant not being summoned, and the case went off the docket. Eleven years thereafter, plaintiff, treating the suit as pending, had the defendant summoned. Held, that as the original cause of action was barred, and the judgment, if valid, was also barred, defendant was protected by the statute. Berkson v. Coen, 71 Miss. 650, 16 So. 204, 1893 Miss. LEXIS 110 (Miss. 1893).

9. —Acknowledgments.

Statute of limitations, applicable to all but two items on debit and credit open account, was not tolled by partial payment on the account where there was no written acknowledgment of indebtedness or promise to pay by the debtor. McArthur v. Acme Mechanical Contractors, Inc., 336 So. 2d 1306, 1976 Miss. LEXIS 1552 (Miss. 1976).

The verbal acknowledgment of the correctness of an account, making it an account stated, will not avoid the statute applicable to open accounts. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938); Floyd v. Pearce, 57 Miss. 140, 1879 Miss. LEXIS 33 (Miss. 1879).

Where defendant, by sworn plea, expressly denies that he wrote, signed, or authorized letter to plaintiff acknowledging correctness of written account sued on, and there is no evidence to contrary, denial must be accepted as true. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938).

10. Evidence.

In an action by an insurance agent to recover from insured premiums paid on his behalf when such insured failed to pay them, under a contract between the parties, the burden was on insured to show that the premiums sued for had been made more than three years prior to the commencement of the action. Neely v. Johnson-Barksdale Co., 194 Miss. 529, 12 So. 2d 924, 1943 Miss. LEXIS 86 (Miss. 1943).

Where an executor or administrator is sued on a probated account against the estate he is administering, some of the items of which appear on the face of the account, as probated, to have been barred by the statute of limitations at the time of the decedent's death, and the executor or administrator pleads the statute of limitations in bar thereof, the plaintiff cannot in reply thereto allege, and offer evidence of, facts not appearing on the probated claim disclosing that the decedent was estopped at the time of his death from pleading the statute of limitations. Whitehead v. Puffer, 187 Miss. 193, 192 So. 566, 1940 Miss. LEXIS 199 (Miss. 1940).

Where buyer sought to take action for fraudulent sale of bonds out of three-year statute of limitations by showing seller acknowledged obligation to deliver bonds in writing within time limited, instrument which purported to be nothing more than acknowledgment of receipt of money for bonds delivered could not be supplemented by parole evidence that it was given for promise to procure and deliver bonds in future. First Nat'l Bank v. Johnson, 177 Miss. 634, 171 So. 11, 1936 Miss. LEXIS 268 (Miss. 1936).

11. Pleading.

The defense afforded by this section [Code 1942, § 729] must be pleaded in order for the defendant to take advantage of it. Johns-Manville Sales Corp. v. Mitchell Enterprises, Inc., 417 F.2d 129, 1969 U.S. App. LEXIS 10523 (5th Cir. Miss. 1969).

The statute [Code 1942, § 729] may not be invoked because defendants were not again summoned after amendment of the declaration, where the order permitting amendment was by agreement. J. R. Watkins Co. v. Welborn, 243 Miss. 527, 138 So. 2d 296, 1962 Miss. LEXIS 371 (Miss. 1962).

The striking out of some of the averments in defendant's replication, setting up fraudulent concealment of the note on which the action was based as a defense to plaintiff's plea of the statute of limitations to the defendant's counterclaim, was not reversible error where the averments of the replication which were not stricken were sufficient to present the issue of the alleged fraudulent concealment of the claim. Williams Yellow Pine Co. v. Williams, 187 Miss. 425, 193 So. 1, 1940 Miss. LEXIS 214 (Miss. 1940).

Where defendant pleaded the general issue and the three-year statute of limitations, the granting of permission to file a sworn plea, at the trial and over plaintiff's objections, denying writing of a letter alleged to constitute acknowledgment of indebtedness removing the bar of the three-year statute was within trial court's discretion. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938).

The alleged error in permitting appellant to file a sworn plea at trial denying writing of letter alleged to constitute acknowledgment of debt taking case out of three-year statute of limitations could not be considered on appeal in absence of cross-assignment of error by appellee. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938).

Plea of statute of limitations held properly in issue by request for a peremptory instruction, though plea was not read to court or jury, where plea was on file several days before trial and was developed on cross-examination of plaintiff's witnesses. First Nat'l Bank v. Johnson, 177 Miss. 634, 171 So. 11, 1936 Miss. LEXIS 268 (Miss. 1936).

12. Running of limitation period.

After an employee was terminated, and his employers refused to reimburse his expenses, the statute of limitations for his breach of contract did not bar the claim as the breach occurred less than a year before the complaint was filed. Smith v. Antler Insanity, LLC, 58 F. Supp. 3d 716, 2014 U.S. Dist. LEXIS 152484 (S.D. Miss. 2014).

Judgment for real estate seller was affirmed under Miss. Code Ann. § 15-1-29 and Miss. Code Ann. § 15-1-49 because, applying the three-year statute of limitations, the seller was entitled to collect installment payments beginning three years ago; the purchasers would have been unjustly enriched if allowed to retain possession of the property without being responsible for the remaining debt. Kersey v. Fernald, 911 So. 2d 994, 2005 Miss. App. LEXIS 699 (Miss. Ct. App. 2005).

In an action arising out of an oral agreement between cotton merchants to enter into a joint venture with no definite date for its termination, the act was not barred by the statute of limitations where the last transaction of the venture took place on July 24, 1970, and the action was commenced sometime prior to December 12, 1972; nor was the action barred by

§ 15-3-1 where the oral agreement had been of an indefinite duration and susceptible of performance within 15 months and where the agreement had been substantially performed by both parties. Beane v. Bowden, 399 So. 2d 1358, 1981 Miss. LEXIS 2030 (Miss. 1981).

Where a cause of action for labor and materials furnished to improve the defendant's property located in Mississippi accrued in this state and the defendant was a nonresident of Mississippi at the time of such accrual and remained a nonresident thereafter, the three-year statute of limitations did not run to bar the claim. Gross v. Thomas, 187 So. 2d 307, 1966 Miss. LEXIS 1344 (Miss. 1966).

Nonresidence of plaintiff in action for purchase price of goods precludes running of statute against counterclaim based upon nonconformity of goods to description. Hedges v. Louisiana Agricultural Supply Co., 238 Miss. 805, 120 So. 2d 136, 1960 Miss. LEXIS 467 (Miss. 1960).

Statute of limitations runs against claim for damages from inferior quality of goods purchased, from time of delivery, and not from time when goods were ordered. Hedges v. Louisiana Agricultural Supply Co., 238 Miss. 805, 120 So. 2d 136, 1960 Miss. LEXIS 467 (Miss. 1960).

A declaration on December 30, 1950, alleging that defendant became indebted to the plaintiff for professional services on or about February 19, 1947, for one amount and on or about November 11, 1947, for another amount, and it was not specifically alleged that the amounts became due and payable on the dates that the indebtedness accrued therefor, the declaration did not necessarily show on its face that the claim was barred by the three-year statute of limitations. Anderson v. Rieveley, 218 Miss. 211, 67 So. 2d 249, 1953 Miss. LEXIS 531 (Miss. 1953).

The rule that facts which prevent the running of the statute of limitations against a probated claim should appear in some form on probate thereof and cannot be made to appear for the first time by evidence offered when claim is under consideration in administration of deceased's estate, does not apply to services and necessaries furnished by a brother to his insane sister, since limitations in such case does not begin to run until her death. Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

Facts which prevent the statute of limitations from running against a probated claim should appear in some form on the probate thereof and cannot be made to appear for the first time by evidence offered when the claim is under consideration in the administration of the decedent's estate. Boggan v. Scruggs, 200 Miss. 747, 29 So. 2d 86, 1947 Miss. LEXIS 358 (Miss. 1947), overruled, Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

The statute does not begin to run against general deposits, wrongfully paid out by bank, until the depositor has made demand on the bank for the money by check, order, draft or other writing. Letts v. Hancock Bank of Gulfport, 195 Miss. 519, 15 So. 2d 422, 15 So. 2d 774, 1943 Miss. LEXIS 151 (Miss. 1943).

Where rentals under an oil, gas and mineral lease, which were to be paid to bank as depository of lessor, were remitted by writing directing deposit to lessor's account, but were paid by the bank to third person on forged receipts, after death of lessor, of which neither lessee nor bank had knowledge, and neither lessor's administrator not grantees of the land had actual knowledge of the lease at the times when such wrongful payments were made, the bank was not relieved by limitation statute of the duty to pay such money to the persons entitled thereto, where no demand was made by lessor's administrator or the grantees of the property. Letts v. Hancock Bank of Gulfport, 195 Miss. 519, 15 So. 2d 422, 15 So. 2d 774, 1943 Miss. LEXIS 151 (Miss. 1943).

Bank chargeable with interest only from the date demand was made upon the bank for payment of the money. Letts v. Hancock Bank of Gulfport, 195 Miss. 519, 15 So. 2d 422, 15 So. 2d 774, 1943 Miss. LEXIS 151 (Miss. 1943).

Where from inception of loan in 1920 to foreclosure in 1934 there was continuous transaction of renewals and payments, and contract was usurious, statute of limitations was properly applied in permitting credit of payments on principal debt. Hardin v. Grenada Bank, 182 Miss. 689, 180

So. 805, 1938 Miss. LEXIS 157 (Miss. 1938).

Notice to buyer of corporate bonds of default of corporation on coupons and of resulting organization of bondholders' protective committee held sufficient notice of falsity of seller's representations that bonds were safe investment to start running of three-year limitation, under statute providing that period of limitation should run from time fraud might have been discovered by reasonable diligence. First Nat'l Bank v. Johnson, 177 Miss. 634, 171 So. 11, 1936 Miss. LEXIS 268 (Miss. 1936).

13. — Accrual of cause of action.

Purported partners alleged to have suffered damages as a result of another purported partner's refusal to turn over proceeds from the sale of a property, as well as the remaining funds borrowed for improvements to the property. Thus, the purported partners' intentional tort claims and partnership and breach of fiduciary duty claims were timely asserted within the applicable statutes of limitation. Latham v. Johnson, 262 So. 3d 569, 2018 Miss. App. LEXIS 314 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 798, 2019 Miss. LEXIS 48 (Miss. 2019).

Circuit court properly granted an employer's motion to dismiss–an employee's action for assault, battery, intentional and negligent infliction of emotional distress, and breach of an employment contract as untimely because, while the employee was underage when employer allegedly began to sexually abuse her, she failed to show that, when her employer allegedly sexually abused her, she was of unsound mind, legal infancy, suffered a latent injury, or that there was something secretive or inherently undiscoverable about the alleged acts or wrongdoing, the discovery rule was inapplicable where the alleged wrongful acts were physical and the employee was aware of the wrongdoing when it happened. Reeg v. Keel, 174 So. 3d 309, 2015 Miss. App. LEXIS 425 (Miss. Ct. App. 2015).

Although a trial court correctly determined that an oral contract existed rather than an open account since there was no final and certain price, summary judgment should not have been granted in favor of a company because there was a genuine issue of material fact as to when payment for barge repairs was due, and equitable estoppel applied to a statute of limitations argument due to apparent repeated assurances that payment would be received upon the sale of the barge. Douglas Parker Elec., Inc. v. Miss. Design & Dev. Corp., 949 So. 2d 874, 2007 Miss. App. LEXIS 69 (Miss. Ct. App. 2007).

Simple demand note was matured at the date of its execution without actual demand being required, and an actual demand was required to begin the running of the statute of limitations only where it was clear that the parties themselves actually intended for a demand to be made; testimony reflected that only interest on the loan was to be paid until an actual demand for payment was made, and accordingly the statute of limitations did not bar recovery of the cash loan. Associated Nursing, Inc. v. Sides, 2007 U.S. Dist. LEXIS 19324 (N.D. Miss. Mar. 19, 2007).

Employee's breach of contract claim against his former employer was barred under the one-year statute of limitations in Miss. Code Ann. § 15-1-29 because, inter alia, the latest date upon which the employee's claim could have accrued, which was when additional projects were awarded to the employer, presumably because of the employee's good performance on the first project, was more than a year before the employee filed suit. United States ex rel. Shannon v. Fed. Ins. Co., 2006 U.S. Dist. LEXIS 56509 (S.D. Miss. Aug. 11, 2006), aff'd, 251 Fed. Appx. 269, 2007 U.S. App. LEXIS 21133 (5th Cir. Miss. 2007).

Services rendered by a daughter to her father until his death under an oral agreement to compensate her therefor, constituted a continuous claim not barred by the three-year statute of limitation. Van Zandt v. First Nat'l Bank, 220 Miss. 127, 70 So. 2d 327, 1954 Miss. LEXIS 417 (Miss. 1954); Stephens v. Duckworth, 188 Miss. 626, 196 So. 219, 1940 Miss. LEXIS 66 (Miss. 1940).

Where in 1943 a bank by mistake credited a deposit to an account of a brother of depositor and both accounts remained inactive until January 1949, when the brother withdrew his account and the bank did not discover the mistake until March 1951 when the active depositor presented his passbook, the cause of action for restitution of the funds did not arise until January 1949 and neither the three- nor the six-year statutes of limitation barred suit thereon brought on June 1951. Van Zandt v. First Nat'l Bank, 220 Miss. 127, 70 So. 2d 327, 1954 Miss. LEXIS 417 (Miss. 1954).

Where a suit was instituted in 1951 to recover for services rendered during 1946 to 1948, to decedent who died in 1950, and this suit was based on promise that claimant would be taken care of for her services at decedent's death, the three-year statute of limitations was not a bar to the action. In re Whittington's Estate, 217 Miss. 457, 64 So. 2d 580, 1953 Miss. LEXIS 451 (Miss. 1953).

Where more than three years has elapsed since on oral agreement for furnishing and installation of an ice cream freezing unit was entered into and unit received by the plaintiff, an action for breach of oral contract was not barred by the statute of limitations since the agreement was in part based on two contingencies, the sale of the existing equipment or its breaking down and the action was started within three years after the equipment ceased to function. Southern Wholesalers v. Stennis Drug Co., 214 Miss. 461, 59 So. 2d 78, 1952 Miss. LEXIS 491 (Miss. 1952).

A contract for board, lodging and services, whether expressed or implied, with no time fixed for payment, or for the termination of the contract, is a continuous one and the statute of limitations is inoperative until the contract is terminated by death. Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

Statute of limitations against claim of brother for services and necessaries furnished to insane sister with expectation of re-payment from the property does not begin to run until the death of such sister. Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

The fact that the claim of a brother for services and necessaries furnished to his insane sister, under expectation of repayment from her property, was divided into monthly and yearly periods, cannot effect an acceleration of the commencement of the running of the statute of limitations, for limitations could only start to operate at the death of the deceased. Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

A cause of action for payment of personal services performed in return for promise of the devise of property did not arise until the death of the promisor without having made such a devise. Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

The right of action by a subrogee accrues when and not before the date of the payment or payments which makes him a subrogee, and the statute of limitations begins to run against him from and not before the date, or dates of such payments by him. Neely v. Johnson-Barksdale Co., 194 Miss. 529, 12 So. 2d 924, 1943 Miss. LEXIS 86 (Miss. 1943).

The statute does not commence to run on a claim for support until the death of the person supported, where there was no definite time for termination of the contract for such support and the obligation was continuing. Lee v. Lee's Estate, 186 Miss. 636, 191 So. 661, 1939 Miss. LEXIS 269 (Miss. 1939).

Cause of action by reason of false certificate to abstract accrued, as respected limitations, at time abstract was certified to and delivered. Johnson v. Crisler, 156 Miss. 266, 125 So. 724, 1930 Miss. LEXIS 155 (Miss. 1930).

Item on account held barred by 3-year limitation; custom that accounts with farmer were not due until October 1 of the year in which the items were sold held not proved. M. G. Travis & Co. v. Mosley, 148 Miss. 368, 114 So. 628, 1927 Miss. LEXIS 66 (Miss. 1927).

Where goods delivered in installments on 60 days, 3-year statute begins to run 60 days after delivery of last installment. Dewees v. Bostwick Lumber & Mfg. Co., 96 Miss. 253, 50 So. 865, 1909 Miss. LEXIS 51 (Miss. 1909).

The right of a surety to enforce contribution from its cosureties arises upon payment which discharges the sureties, and the statute runs from that time and not from the accrual of the right of action on the original obligation. Pass v. Board of Sup'Rs., 71 Miss. 426, 14 So. 447 (Miss. 1893).

Credits in money and farm products upon an open account for schooling, the items being mainly for tuition, books, etc., does not make the account a mutual and current open account, and the statute runs against the several items from their dates. Allen v. Hillman, 69 Miss. 225, 13 So. 871, 1891 Miss. LEXIS 174 (Miss. 1891).

14. —New cause of action.

Where an attorney brought a suit in chancery against a client for attorney's fee, an amended bill introduced no new cause of action and stated no new facts as the basis for recovery and it simply made definite the allegation as to when the attorney was to be paid, and thereby perfected or amplified the cause of action set up in the original pleading and related back to the commencement of the action, the running of statute of limitations was tolled. Harrison v. Landrum, 223 Miss. 207, 78 So. 2d 132, 1955 Miss. LEXIS 370 (Miss. 1955).

Where on May 6, 1953, a drug company brought an action against a former partner for indebtedness due to the partnership for drugs sold, and where on July 13, 1953 the drug company filed an amendment to its declaration which consisted of a sworn itemized statement of account with copies of the original invoices of merchandise sold and delivered to the partner during the period from May 10, 1950, to June 2, 1950, this amendment introduced no new cause of action and the statute of limitations did not apply. McKesson & Robbins, Inc. v. Coker, 222 Miss. 774, 77 So. 2d 302, 1955 Miss. LEXIS 662 (Miss. 1955).

15. Miscellaneous.

Documents signed by plaintiff employees in a Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C.S. § 2101 et seq., during orientation, setting forth their rate of pay and other information, did not constitute a written employment contract within the meaning of Miss. Code. Ann. § 15-1-49; Miss. Code. Ann. § 15-1-29 set forth the appropriate statute of limitations in the case. Brewer v. Am. Power Source, Inc., 517 F. Supp. 2d 881, 2007 U.S. Dist. LEXIS 74154 (N.D. Miss. 2007), aff'd, 291 Fed. Appx. 656, 2008 U.S. App. LEXIS 19338 (5th Cir. Miss. 2008).

In a dispute involving a promissory note, an issue of which statute of limitations applied was not decided because the creditor never filed suit to foreclose on the note, and the creditor never filed collection on the note. Chimento v. Fuller, 965 So. 2d 668, 2007 Miss. LEXIS 543 (Miss. 2007).

Fact that a former wife had a high paying job and a husband voluntarily left his employment was insufficient to show a material change in circumstances justifying a modification of alimony; however, a chancery court did not err by fashioning the wife a remedy from an escalation clause in a property agreement, and the three-year statute of limitations applied since it was a contract matter. D'Avignon v. D'Avignon, 945 So. 2d 401, 2006 Miss. App. LEXIS 549 (Miss. Ct. App. 2006), overruled, Moseley v. Smith, 180 So. 3d 667, 2014 Miss. App. LEXIS 689 (Miss. Ct. App. 2014).

In action by plaintiff who sought to be paid for interview given by him, which resulted in book about him and his family, where plaintiff's quantum meruit claims against publisher and author of book were time barred under § 15-1-29, 15-1-29 also barred plaintiff's quantum meruit claims against foreign broadcasting corporation that filmed documentary based on book and cable television channel that aired documentary, as plaintiff failed to show that he rendered any new services to television defendants after he provided interview. Haynes v. Lemann, 921 F. Supp. 385, 1996 U.S. Dist. LEXIS 4382 (N.D. Miss. 1996).

A bad faith breach of contract cause of action arising from an attorney's alleged failure to properly pursue an appeal alleged the tort of bad faith, not a breach of contract per se, and was therefore governed by the 6-year general limitation in § 15-1-49 rather than the 3-year statute of limitations in § 15-1-29 for actions

based on unwritten contracts. Hurst v. Southwest Miss. Legal Servs. Corp., 610 So. 2d 374, 1992 Miss. LEXIS 751 (Miss. 1992), overruled, Rains v. Gardner, 731 So. 2d 1192, 1999 Miss. LEXIS 47 (Miss. 1999).

When a writing or memorandum is lost or destroyed, both its existence and contents may be proven by parole evidence; the loss or destruction of a memorandum does not deprive it of effect under the Statute of Frauds. Thus, § 15-1-29, § 15-1-73 and the Statute of Frauds (§ 15-3-1) did not bar an action to enforce a loan agreement which was allegedly destroyed in a fire where the plaintiff sufficiently proved the existence and contents of the destroyed memorandum. Williams v. Evans, 547 So. 2d 54, 1989 Miss. LEXIS 335 (Miss. 1989).

Action against attorney for negligence in preparing title certificate is governed by 6 year statute of limitations (§ 15-1-49), not by 3 year statute (§ 15-1-29). United Cos. Mortg., Inc. v. Jones, 465 So. 2d 1083, 1985 Miss. LEXIS 1988 (Miss. 1985).

In a legal malpractice action the six-year statute of limitations provided in § 15-1-49 governed the action rather than § 15-1-29, where plaintiffs clients' declaration charging that the attorney negligently conducted the legal representation of the plaintiffs by failing to list certain priority claims that could have been satisfied from the assets of the bankruptcy estate sounded in tort, regardless of the oral contract under which the attorney undertook legal representation of the plaintiffs. Hutchinson v. Smith, 417 So. 2d 926, 1982 Miss. LEXIS 2098 (Miss. 1982).

The availability of the defense afforded by this section [Code 1942, § 729] will depend on the particular facts in each case. Johns-Manville Sales Corp. v. Mitchell Enterprises, Inc., 417 F.2d 129, 1969 U.S. App. LEXIS 10523 (5th Cir. Miss. 1969).

In an action in federal court based on diversity, even though it appears from the papers filed by the plaintiff that so much of the amount sued for on an open account will be barred by operation of this section [Code 1942, § 729] to reduce the amount in controversy to less than $10,000, this fact alone will not serve to deprive the court of jurisdiction, for the issue is a factual one requiring adjudication on the merits. Johns-Manville Sales Corp. v. Mitchell Enterprises, Inc., 417 F.2d 129, 1969 U.S. App. LEXIS 10523 (5th Cir. Miss. 1969).

This section [Code 1942, § 729] of the statute was not applicable to a situation where a donor delivered certain promissory notes secured by mortgage to a bank for certain beneficiaries and, the bank being incapable of performing the trust, the donor assumed control of such notes for the benefit of the beneficiaries and through his unauthorized act the notes became valueless giving rise to an action against his executor, since there existed a trust in regard to the notes and their intended security not cognizable by the courts of the common law to the enforcement of which the ten-year statute of limitations applied. Yandell v. Wilson, 182 Miss. 867, 183 So. 382, 1938 Miss. LEXIS 202 (Miss. 1938).

Mississippi six-year statute, not three-year statute, applied to action for use and occupation of river bank controlled by Louisiana law. Louisiana & M. R. T. Co. v. Long, 159 Miss. 654, 131 So. 84, 1930 Miss. LEXIS 358 (Miss. 1930).

Mortgagee's action against parties cashing check on unauthorized indorsement for award in condemnation proceeding was barred by three-year statute, since action was based on the canceled check with the indorsements of the parties on the back thereof, there being no implied promise to pay deducible from the instrument itself. Federal Land Bank v. Collins, 156 Miss. 893, 127 So. 570, 1930 Miss. LEXIS 233 (Miss. 1930).

Replevin action involving ownership of personal property is not within the purview of this section [Code 1942, § 729]. Shinault v. Shinault, 146 Miss. 900, 112 So. 593, 1927 Miss. LEXIS 256 (Miss. 1927).

Where land subject to mortgage was foreclosed and the former owner induced another to purchase it from the mortgagee who had purchased it at the foreclosure sale under an oral agreement to repurchase, former owner could not, after default, defend action to cancel his claims to the land by setting up either the three- or six-year statutes of limitation, since under the circumstances nothing but adverse possession for ten years could avail him. Gentry v. Gamblin, 79 Miss. 437, 28 So. 809, 1901 Miss. LEXIS 4 (Miss. 1901).

RESEARCH REFERENCES

ALR.

What constitutes a contract in writing within statute of limitations. 3 A.L.R.2d 809.

Limitation of actions as applied to account stated. 51 A.L.R.2d 331.

When is account "mutual" for purposes of rule that limitations run from last item in open, current, and mutual account. 45 A.L.R.3d 446.

What statute of limitations governs damage action against attorney for malpractice. 2 A.L.R.4th 284.

What statute of limitations governs physician's action for wrongful denial of hospital privileges. 3 A.L.R.4th 1214.

Debtor's restrictive language accompanying part payment as preventing interruption of statute of limitations. 10 A.L.R.4th 932.

When statute of limitations commences to run on right of partnership accounting. 44 A.L.R.4th 678.

Am. Jur.

7 Am. Jur. Pl & Pr Forms (Rev), Contracts, Form 13.1 (answer – defense – statute of limitations).

CJS.

54 C.J.S., Limitations of Actions §§ 86-91.

Law Reviews.

1978 Mississippi Supreme Court Review: Commercial Law. 50 Miss. L. J. 41, March 1979.

§ 15-1-31. When statute commences to run on open accounts.

In all actions brought to recover the balance due upon a mutual and open current account, where both parties are merchants or traders, the cause of action shall be deemed to have accrued at the time of the true date of the last item proved in such account. In all other actions upon open accounts, the period of limitation shall commence to run against the several items thereof from the dates at which the same respectively became due and payable.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (10); 1857, ch. 57, art. 20; 1871, § 2164; 1880, § 2671; 1892, § 2740; 1906, § 3100; Hemingway's 1917, § 2464; 1930, § 2300; 1942, § 730.

Cross References — Recovery of attorney's fees in suit on open account, see § 11-53-81.

JUDICIAL DECISIONS

ANALYSIS

1. What are mutual and open current accounts.
2. Persons to whom applicable.
3. Accrual of cause of action.
4. —Effect of custom and usage.

1. What are mutual and open current accounts.

Cash payments upon an open account will not create a "mutual and open current account." Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938); Abbey

v. Owens, 57 Miss. 810, 1880 Miss. LEXIS 64 (Miss. 1880).

Where an account for goods sold, even if originally a mutual and open account, was past due more than three years before suit thereon was filed, cash payments reducing balance due did not make it a "mutual and open current account" within the meaning of this section [Code 1942, § 730]. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938).

An account is not a mutual account, though containing many items where the defendant's items were merely payments, and he had no independent account against his creditor. George D. Barnard & Co. v. Sykes, 72 Miss. 297, 18 So. 450, 1894 Miss. LEXIS 147 (Miss. 1894).

If a merchant sell supplies to his customer, and receive from him cotton, which he sells for him and credits the net proceeds of the cotton to the account against the customer for supplies, the account thus kept will be a "mutual and open current account." Abbay v. Hill, 64 Miss. 340, 1 So. 484, 1886 Miss. LEXIS 70 (Miss. 1886).

2. Persons to whom applicable.

Farmer paying account partly with cotton and livestock, credited on account, was not "trader" within statute of limitation. M. G. Travis & Co. v. Mosley, 148 Miss. 368, 114 So. 628, 1927 Miss. LEXIS 66 (Miss. 1927).

3. Accrual of cause of action.

In an action arising out of an oral agreement between cotton merchants to enter into a joint venture with no definite date for its termination, the action was not barred by the statute of limitations where the last transaction of the venture took place on July 24, 1970, and the action was commenced sometime prior to December 12, 1972; nor was the action barred by § 15-3-1 where the oral agreement had been of an indefinite duration and susceptible of performance within 15 months and where the agreement had been substantially performed by both parties. Beane v. Bowden, 399 So. 2d 1358, 1981 Miss. LEXIS 2030 (Miss. 1981).

Action for balance upon mutual and open current account barred in 3 years from date of last item. W. W. Walley & Son v. L. N. Dantzler Co., 114 Miss. 601, 75 So. 433, 1917 Miss. LEXIS 65 (Miss. 1917).

Cause of action for price of fertilizer did not accrue until time for settlement under contract. Gulfport Fertilizer Co. v. McMurphy, 114 Miss. 250, 75 So. 113, 1917 Miss. LEXIS 27 (Miss. 1917).

4. —Effect of custom and usage.

A local usage as to time of payment may be so well known that it will be implied into a contract unless a different time were agreed. Hendricks v. Robinson & Stevens, 56 Miss. 694, 1879 Miss. LEXIS 195 (Miss. 1879); Hunter v. Wilkinson, 44 Miss. 721, 1871 Miss. LEXIS 33 (Miss. 1871).

It is competent to show, by custom of merchants, that when cash is not paid for merchandise the sale is on a credit for a certain time. Effinger v. Henderson, 33 Miss. 449, 1857 Miss. LEXIS 57 (Miss. 1857).

RESEARCH REFERENCES

ALR.

Limitation of actions as applied to account stated. 51 A.L.R.2d 331.

When is account "mutual" for purposes of rule that limitations run from last item in open, current, and mutual account. 45 A.L.R.3d 446.

When statute of limitations commences to run on right of partnership accounting. 44 A.L.R.4th 678.

CJS.

54 C.J.S., Limitations of Actions §§ 186-191.

§ 15-1-33. Limitations applicable to actions and suits for penalty or forfeiture.

All actions and suits for any penalty or forfeiture on any penal statute, brought by any person to whom the penalty or forfeiture is given, in whole or in part, shall be commenced within one year next after the offense was committed, and not after.

HISTORY: Codes, 1857, ch. 57, art. 23; 1871, § 2167; 1880, § 2672; 1892, § 2741; 1906, § 3101; Hemingway's 1917, § 2465; 1930, § 2301; 1942, § 731.

Cross References — Limitations on prosecutions generally, see §§ 99-1-5 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Actions subject to limitation.
3. Actions not subject to limitation.
4. Pleading.

1. In general.

A statute is penal in character within the purview of this section [Code 1942, § 731] when its controlling purpose is to impose a punishment for violation of its provisions. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

Law of the forum determines whether or not an action or suit is one to recover a "penalty" within the purview of this section [Code 1942, § 731]. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

Whether an action under the Federal Fair Labor Standards Act for recovery of overtime compensation, liquidated damages, and attorney's fees constitutes an action for "penalty" within the meaning of this section [Code 1942, § 731], is for the determination of the Supreme Court of Mississippi rather than that of the Federal Supreme Court. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

This section [Code 1942, § 731] is not remedial, but imposes a penalty. State use of Rogers v. Newton, 191 Miss. 611, 3 So. 2d 816, 1941 Miss. LEXIS 166 (Miss. 1941).

2. Actions subject to limitation.

Section 95-5-10(2) is subject to the statute of limitations provided in § 95-5-29 because it involves specific penalties; § 95-5-10(1) is not subject to § 95-5-29, but is subject to § 15-1-33 because it is a penalty controlled by a one year statute of limitation. McCain v. Memphis Hardwood Flooring Co., 725 So. 2d 788, 1998 Miss. LEXIS 272 (Miss. 1998), overruled in part, Stockstill v. Gammill, 943 So. 2d 35, 2006 Miss. LEXIS 624 (Miss. 2006).

Tenant, who became trespasser by holding over beyond expiration of term, is liable for double rent thereafter, but only for that period dating from one year prior to suit. Sherrill v. Stewart, 199 Miss. 216, 23 So. 2d 915, 1945 Miss. LEXIS 282 (Miss. 1945).

The one-year limitation for recovery of a penalty under this section [Code 1942, § 731] is applicable to an action to recover double rent under Code 1942, § 947. Sherrill v. Stewart, 197 Miss. 880, 21 So. 2d 11, 1945 Miss. LEXIS 319 (Miss. 1945).

"Liquidated damages" of an additional equal amount for nonpayment of overtime compensation under the Federal Fair Labor Standards Act constitutes a "penalty" within the meaning of this section [Code 1942, § 731] so that recovery therefor is barred if the action is not commenced within one year. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

In an action on the bond of a county superintendent of education and on pay certificates issued by him in an amount in excess of the school receipts or budget estimates for the current fiscal year, it was proper to hold that the liability imposed by the statute upon the superintendent to holders of the certificate was a "penalty," and that therefore action thereon was barred by limitation when not commenced within one year after the cause of action accrued. State use of Rogers v. Newton, 191 Miss. 611, 3 So. 2d 816, 1941 Miss. LEXIS 166 (Miss. 1941).

In shipper's action for freight charges exceeding those authorized by Railroad Commission and for 100 per cent penalty, one-year limitation statute barred penalty. Gulf & S. I. R. Co. v. Laurel Oil & Fertilizer Co., 172 Miss. 630, 172 Miss. 634, 158 So. 778, 159 So. 838, 160 So. 564, 1935 Miss. LEXIS 95 (Miss.), amended, 172 Miss. 654, 159 So. 838 (Miss. 1935).

Motion against sheriff on official bond is barred by this section [Code 1942, § 731]. Bank of Hickory v. May, 119 Miss. 239, 80 So. 704, 1918 Miss. LEXIS 35 (Miss. 1918).

3. Actions not subject to limitation.

Supreme Court of Mississippi overruled McCain v. Memphis Hardwood Flooring Co., 725 So. 2d 788 (Miss. 1998), to the extent that the remedies provided in Miss. Code Ann. § 95-5-10(1) are subject to the limitations period set out in Miss. Code Ann. § 15-1-33. Stockstill v. Gammill, 943 So. 2d 35, 2006 Miss. LEXIS 624 (Miss. 2006).

Hospital was a subdivision of state for purposes of its suit against doctor for unpaid rent, and was thus not subject to one-year statute of limitations; county board of supervisors and city board of aldermen passed resolutions authorizing purchase and lease of office by hospital for express purpose of recruiting doctors to county and city, and office was purchased and leased pursuant to local and private legislation. Murphree v. Aberdeen-Monroe County Hosp., 671 So. 2d 1300, 1996 Miss. LEXIS 61 (Miss. 1996).

Mississippi Constitution Article 4 § 104 directs that statute of limitations in civil cases shall not run against state or any subdivision thereof; therefore, one year statute of limitations provided in § 15-1-33 is inoperative when suit is brought on behalf of state against School Board and Superintendent for violation of conflict of interest statute. State ex rel. Pittman v. Ladner, 512 So. 2d 1271, 1987 Miss. LEXIS 2787 (Miss. 1987).

Code 1942, § 731 applies only to suits for a penalty or forfeiture based on a penal statute and is not applicable to a suit on a fidelity bond. Latham v. United States Fidelity & Guaranty Co., 267 So. 2d 895, 1972 Miss. LEXIS 1431 (Miss. 1972).

In a suit to cancel as cloud on title claim asserted by husband by virtue of inheritance from his deceased spouse, where it was finally adjudicated that the husband had pleaded guilty to manslaughter in the death of his wife, the suit was not one for penalty or forfeiture on a penal statute required to be brought within one year from the date of offense. Henry v. Toney, 217 Miss. 716, 64 So. 2d 904, 1953 Miss. LEXIS 484 (Miss. 1953).

Action under the Federal Fair Labor Standards Act to recover overtime compensation is not an action to recover a "penalty" within the meaning of this section [Code 1942, § 731], and therefore is not barred although not commenced within one year. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

Reasonable attorney's fees allowed in action to recover overtime compensation under Federal Fair Labor Standards Act does not constitute "penalty" within meaning of this section [Code 1942, § 731], and therefore is not barred although the action was commenced after the one-year limitation period. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

Statute making insurance agent of company unauthorized to do business in State personally liable on policy held remedial, not penal, as regards insured, hence insured's suit thereunder was not within one-year limitation on actions for penalty. Wilkinson v. Goza, 165 Miss. 38, 145 So. 91, 1932 Miss. LEXIS 300 (Miss. 1932).

State revenue agent's suit for penalties for violating the anti-trust laws not barred by this section [Code 1942, § 731]. Nugent & Pullen v. Robertson, 126 Miss.

419, 88 So. 895, 1921 Miss. LEXIS 47 (Miss. 1921).

Personal liability of directors for illegal payment of dividends not barred by this section [Code 1942, § 731]. Metzger v. Joseph, 111 Miss. 385, 71 So. 645, 1916 Miss. LEXIS 309 (Miss. 1916).

Delayage charge fixed by railroad commission for detention of cars in transit, not penalty within this section [Code 1942, § 731]. Keystone Lumber Yard v. Yazoo & M. V. R. Co., 97 Miss. 433, 53 So. 8, 1910 Miss. LEXIS 287 (Miss. 1910).

Action for actual damages against clerk for failure to give defaulting taxpayer notice of expiration of exemption period not barred by this section [Code 1942, § 731]. McClendon v. Whitten, 95 Miss. 124, 48 So. 964, 1909 Miss. LEXIS 252 (Miss. 1909).

A suit for interest paid upon a usurious contract is not a suit to recover a penalty within the statute. Commercial Bank v. Auze, 74 Miss. 609, 21 So. 754, 1897 Miss. LEXIS 55 (Miss. 1897).

4. Pleading.

In civil suit to recover penalty, defense of limitation must be specifically plead. Yazoo & M. V. R. Co. v. Kirk, 102 Miss. 41, 58 So. 710, 1912 Miss. LEXIS 28 (Miss.), modified, 102 Miss. 56, 58 So. 834 (Miss. 1912), limited, Norwich Union Fire Ins. Co. v. Standard Drug Co., 121 Miss. 510, 83 So. 676, 1920 Miss. LEXIS 97 (Miss. 1920).

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Forfeitures and Penalties §§ 42, 87 et seq.

CJS.

54 C.J.S., Limitations of Actions § 96.

§ 15-1-35. Limitations applicable to actions for certain torts.

All actions for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, for failure to employ, and for libels, shall be commenced within one (1) year next after the cause of such action accrued, and not after.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (6); 1857, ch. 57, art. 7; 1871, § 2152; 1880, § 2673; 1892, § 2742; 1906, § 3102; Hemingway's 1917, § 2466; 1930, § 2302; 1942, § 732; Laws, 1983, ch. 394, eff from and after July 1, 1983.

Cross References — Limitations applicable to malpractice actions generally, see § 15-1-36.

Actionable words generally, see §§ 95-1-1 through 95-1-5.

Limitations of prosecutions generally, see §§ 99-1-5 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Accrual.
4. Assault and battery.
5. Slander and libel.
6. Menace.
7. Pleading.
8. Failure to employ.
9. Invasion of privacy.
10. Intentional infliction of emotional distress.
11. Malicious prosecution.
12. Discovery rule.
13. Tolling.

1. In general.

Trial court abused its discretion in determining that an estate waived its statute-of-limitations defense because the estate did not participate actively "all the while" during the delay in the litigation process, and the delay was reasonable, given a will contest. Estate of Puckett v. Clement, 238 So. 3d 1139, 2018 Miss. LEXIS 124 (Miss. 2018).

Because it was clear that for a violation of Miss. Code Ann. § 97-3-107(4) to occur the offending conduct had to be intentional, and Miss. Code Ann. § 15-1-35 applied to all intentional torts that were substantially like those enumerated, stalking was subject to the one-year statute of limitations of § 15-1-35; because the employee did not file her complaint within one year of last alleged action by her supervisor, it was time-barred. Jones v. B.L. Dev. Corp., 940 So. 2d 961, 2006 Miss. App. LEXIS 792 (Miss. Ct. App. 2006).

Insured's claims against the insurer and its investigator were intentional torts subject to the one year statute of limitations, Miss. Code Ann. § 15-1-35; the investigator's acts of following the insured night and day, following her to public and private locations, and appearing at her home and place of employment, were deliberate acts and since the insured was unaware of any stalking by the investigator after his arrest on March 11, 2000, the one year statute of limitations accordingly ran from March 11, 2000, and the insured filed her claims more than one year after that date. Lynch v. Liberty Mut. Ins. Co., 909 So. 2d 1289, 2005 Miss. App. LEXIS 137 (Miss. Ct. App. 2005).

Trial court erred in denying a summary judgment motion filed by a casino and its employee against the malicious prosecution claim filed by certain individuals. The individuals' first claim against the casino was dismissed for want of prosecution, and the savings clause in Miss. Code Ann. § 15-1-69 did not prevent the second claim, which was based on the same facts, from being barred by the statute of limitation in Miss. Code Ann. § 15-1-35. Jackpot Miss. Riverboat, Inc. v. Smith, 874 So. 2d 959, 2004 Miss. LEXIS 641 (Miss. 2004), overruled in part, Knight v. Knight, 85 So. 3d 832, 2012 Miss. LEXIS 24 (Miss. 2012).

The listing of intentional torts in § 15-1-35 was intended to be inclusive. Robinson v. Coastal Family Health Center, Inc., 756 F. Supp. 958, 1990 U.S. Dist. LEXIS 18728 (S.D. Miss. 1990).

There can be no escape from bar of statute of limitations applicable to intentional torts by mere refusal to style the cause brought in the recognized statutory category and thereby circumvent the prohibition of the statute. Robinson v. Coastal Family Health Center, Inc., 756 F. Supp. 958, 1990 U.S. Dist. LEXIS 18728 (S.D. Miss. 1990).

Once Wilson v. Garcia (1985) 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938, was decided, public was fairly on notice that in Mississippi one-year limitations period might well be chosen over 6-year limitations period as more appropriate period for actions under 42 USCS § 1983. Hanner v. Mississippi, 833 F.2d 55, 1987 U.S. App. LEXIS 15691 (5th Cir. Miss. 1987).

This section [Code 1942, § 732] provides an inclusive listing of intentional torts recognized in Mississippi. Dennis v. Travelers Ins. Co., 234 So. 2d 624, 1970 Miss. LEXIS 1414 (Miss. 1970).

2. Applicability.

Dismissal of a wrongful death suit against a psychiatrist was appropriate, when the suit alleged that the psychiatrist's intentional and negligent acts created an irresistible impulse in the decedent, a patient, to commit suicide because the intentional tort claims were barred as both the complaint and amended complaint were filed outside the one-year limitations period, following the decedent's suicide. Irby v. Madakasira, — So. 3d —, 2017 Miss. App. LEXIS 173 (Miss. Ct. App. Mar. 28, 2017).

Circuit court erred in dismissing a husband's wrongful appropriation of insurance funds, unjust enrichment, and civil conspiracy claims against his former wife where those claims were not intentional torts and were not subject to the one-year limitations period set forth in Miss. Code Ann. § 15-1-35. Breeden v. Buchanan, 164 So. 3d 1057, 2015 Miss. App. LEXIS 45 (Miss. Ct. App.), cert. denied, 160 So. 3d 704, 2015 Miss. LEXIS 210 (Miss. 2015).

After an employee was terminated, and his employers refused to reimburse his expenses, his claims for negligent infliction of emotional distress and tortious interference with business relations were clearly not time-barred; however, the facts had to be more closely examined to determine whether the claims for defamation and intentional infliction of emotional distress were time-barred. Smith v. Antler Insanity, LLC, 58 F. Supp. 3d 716, 2014 U.S. Dist. LEXIS 152484 (S.D. Miss. 2014).

Though appellant contended that she had negligence claims against a casino that were not time-barred, all of her instances of alleged negligence were part of her false arrest claim; thus, the one-year statute of limitations for intentional torts, Miss. Code Ann. § 15-1-35 (2003), applied to bar her suit. Brown v. Harrah's Entm't, Inc., 14 So. 3d 827, 2009 Miss. App. LEXIS 527 (Miss. Ct. App. 2009).

In a products liability case in which a driver asserted a claim for intentional tort/conduct and she filed her complaint almost two years after her head-on collision, her intentional tort/conduct claim was barred by the one-year limitations period in Miss. Code. Ann. 15-1-35. Williams v. Daimler Chrysler Corp., 2008 U.S. Dist. LEXIS 55123 (N.D. Miss. July 18, 2008), aff'd, 310 Fed. Appx. 747, 2009 U.S. App. LEXIS 5870 (5th Cir. Miss. 2009).

Customer's claim for defamation was untimely where, as was obvious from the professed date of accrual of the customer's alleged defamation, and the date he alleged the cause of action within his amended complaint, the time limitation specified in Miss. Code Ann. § 15-1-35 had expired. Hudson v. Palmer, 977 So. 2d 369, 2007 Miss. App. LEXIS 580 (Miss. Ct. App. 2007), cert. denied, 977 So. 2d 343, 2008 Miss. LEXIS 95 (Miss. 2008).

Wrongful death claim against the corporations was time-barred and summary judgment was properly granted in favor of the corporations on the wife's wrongful death claim where the statute of limitations expired before litigation commenced. May v. Pulmosan Safety Equip. Corp., 948 So. 2d 483, 2007 Miss. App. LEXIS 53 (Miss. Ct. App. 2007).

Dismissal by the district court of the football player who allegedly caused injury to plaintiff's son's eye during football practice was proper where the appellate court determined that plaintiff's claim stated an intentional tort, and the applicable statute of limitations had run because the amended complaint was filed on February 2, 2001, well over a year from the September 14, 1999 incident. Priester v. Lowndes County, 354 F.3d 414, 2004 U.S. App. LEXIS 125 (5th Cir. Miss.), cert. denied, 543 U.S. 829, 125 S. Ct. 153, 160 L. Ed. 2d 44, 2004 U.S. LEXIS 5788 (U.S. 2004).

One-year statute of limitation of Miss. Code Ann. § 15-1-35 applied to all actions substantially similar to the eight intentional torts enumerated in that statute, but four of psychologist's eight claims were improperly dismissed on statute of limitation grounds as the wife and second husband were diligently substituted for fictitious parties four days after the psychologist ascertained their identities upon learning of their alleged involvement in a letter-writing campaign against them upon deposing another party, and the claims against them related back to the timely filing of the original complaint. Gasparrini v. Bredemeier, 802 So. 2d 1062, 2001 Miss. App. LEXIS 548 (Miss. Ct. App. 2001).

Section 15-1-35 does not cover all intentional tortious conduct, but applies only to the torts enumerated in the statute; thus, § 15-1-35 did not apply to a claim for malicious interference with business relations. Nichols v. Tri-State Brick & Tile Co., 608 So. 2d 324, 1992 Miss. LEXIS 675 (Miss. 1992).

Discriminatory discharge action under federal civil rights law (42 USCS § 1981) is not barred by one year statute of limitations for enumerated intentional torts, but is governed by residual statute of limitations which provides 6-year limitation period. Kozam v. Emerson Electric Co., 711 F. Supp. 313, 1989 U.S. Dist. LEXIS 4249 (N.D. Miss. 1989).

One year statute of limitations in § 15-1-35 applies to all 42 USCS § 1981 claims brought in Mississippi. Dillard v. Vicksburg Medical Center, Inc., 695 F. Supp. 880, 1988 U.S. Dist. LEXIS 11261 (S.D. Miss. 1988).

One year statute of limitations is applicable to claims under 42 USCS § 1981 arising after Supreme Court's decision in Wilson v. Garcia (1985) 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938 while longer statute of limitations applies for claims arising before such decision. Dillard v. Vicksburg Medical Center, Inc., 695 F. Supp. 880, 1988 U.S. Dist. LEXIS 11261 (S.D. Miss. 1988).

One year statute of limitations is applicable to claims under 42 USCS § 1981 arising after Supreme Court's decision in Wilson v. Garcia (1985) 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938 while longer statute of limitations applies for claims arising before such decision. Dillard v. Vicksburg Medical Center, Inc., 695 F. Supp. 880, 1988 U.S. Dist. LEXIS 11261 (S.D. Miss. 1988).

One-year statute of limitations would be applied to all § 1981 claims; reasoning applied to § 1983 actions would likely be applied to § 1981 actions, and therefore actions accruing before decision in Wilson v. Garcia (1985) 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938, would have a limitations period of (1) longer pre-Wilson period, commencing at time of action accruing, or (2) post-Wilson one-year period, commencing with date of Wilson decision, whichever expires first. Byrd v. Travenol Lab., 675 F. Supp. 342, 1987 U.S. Dist. LEXIS 11475 (N.D. Miss. 1987).

Decision determining that § 15-1-35 applies to all 42 USCS § 1983 actions brought in Mississippi should not apply retroactively. Young v. Biggers, 820 F.2d 727, 1987 U.S. App. LEXIS 9351 (5th Cir. Miss. 1987).

Section 15-1-35 is not applicable to invasion of privacy claim; such claim is not listed specifically in statute and cannot be defined to fall squarely within any category included therein. Blackwell v. Hustler Magazine, Inc., 633 F. Supp. 870, 1986 U.S. Dist. LEXIS 29783 (S.D. Miss. 1986).

All § 1983 actions brought in Mississippi are governed by Mississippi Code § 15-1-35, Mississippi's one-year statute of limitations for intentional torts. Storey v. United States, 629 F. Supp. 1174, 1986 U.S. Dist. LEXIS 28281 (N.D. Miss. 1986).

Defendant's motion to dismiss was denied and one-year statute of limitations set forth in § 15-1-35 was inapplicable in civil rights action by pro se prisoner who submitted complaint and application to proceed in forma pauperis in timely manner but where prisoner had no control over when Magistrate would allow complaint to be filed, thus for purposes of statute of limitation operable date was upon receipt by Court Clerk. Smith v. Ouzts, 629 F. Supp. 1001, 1986 U.S. Dist. LEXIS 28903 (S.D. Miss. 1986).

One-year statute of limitations prescribed by § 15-1-35 for intentional torts does not apply to federal civil rights action arising from police officer's alleged conduct in smashing plaintiff's glasses, beating him, and cursing at him. Simons v. Columbus, 593 F. Supp. 876, 1984 U.S. Dist. LEXIS 24020 (N.D. Miss. 1984), aff'd, 805 F.2d 1031, 1986 U.S. App. LEXIS 33457 (5th Cir. Miss. 1986).

Wrongful or fraudulent foreclosure of property action is case action governed by 6 year statute of limitations (§ 15-1-49), not by one year statute of limitations applicable to specified intentional torts (§ 15-1-35). Southern Land & Resources Co. v. Dobbs, 467 So. 2d 652, 1985 Miss. LEXIS 2019 (Miss. 1985).

In action against bail bondsmen and their surety alleging false imprisonment and malicious prosecution based upon allegedly improper arrest of plaintiff for jumping bail, applicable statute of limitations is 6-year period set forth in § 15-1-49 rather than one-year period set forth in § 15-1-35, since, although action is grounded in tort, it springs from underlying bond agreement between bail bondsmen and plaintiff. Mathis v. Indemnity Ins. Co., 588 F. Supp. 489, 1983 U.S. Dist. LEXIS 18293 (S.D. Miss. 1983).

The Mississippi six-year catch-all statute (Code § 15-1-49) controlled an action pursuant to 42 USCS § 1983 against a city, its police department and various policemen asserting deprivation of constitutional right to freedom from physical abuse and intimidation which action allegedly occurred when in the course of arresting and jailing the plaintiff two policemen hurled him head first into the concrete floor and wall of a cell. Morrell v. Picayune, 690 F.2d 469, 1982 U.S. App. LEXIS 24429 (5th Cir. Miss. 1982).

Assuming arguendo that an insurance adjuster illegally intruded upon the privacy of plaintiffs after their son had been critically injured in an automobile accident, such intrusion would constitute an intentional tort and, as such, would be barred by the one year statute of limitations. Andrews v. GAB Business Services, Inc., 443 F. Supp. 510, 1977 U.S. Dist. LEXIS 15346 (N.D. Miss. 1977).

Action under federal civil rights statute against sheriff and constable to recover damages for unfounded arrest of plaintiff, beating suffered at time of arrest, and failure to summon physician to treat wounds suffered by plaintiff, was subject to the 6 year statute of limitations. Shaw v. McCorkle, 537 F.2d 1289, 1976 U.S. App. LEXIS 7343 (5th Cir. Miss. 1976).

Civil rights action brought by motorist against highway patrolman and surety on their official performance bond arising out of an incident of alleged physical abuse is an action on contract governed by the state's six year limitation statute rather than an action for intentional tort governed by a one year statute. Shaw v. McCorkle, 537 F.2d 1289, 1976 U.S. App. LEXIS 7343 (5th Cir. Miss. 1976).

A cause of action against four highway patrolmen and their surety, alleging that the plaintiff had been beaten and abused by the highway patrolmen, was essentially an action against a public officer and the surety on his bond, was accordingly an action in contract, and was governed by the six year statutory limitation for written contracts, § 15-1-49, and not the one year statutory limitation period for tort actions, § 15-1-35. Shaw v. McCorkle, 537 F.2d 1289, 1976 U.S. App. LEXIS 7343 (5th Cir. Miss. 1976).

This section [Code 1942, § 732] is not applicable to an action for trespass on land. Bush v. Laurel, 234 Miss. 93, 105 So. 2d 562, 1958 Miss. LEXIS 468 (Miss. 1958).

The section [Code 1942, § 732] does not apply to actions against a railroad company for personal injuries. Bell v. Kansas C., M. & B. R. Co., 68 Miss. 19, 8 So. 508, 1890 Miss. LEXIS 39 (Miss. 1890).

3. Accrual.

Purported partners alleged to have suffered damages as a result of another purported partner's refusal to turn over proceeds from the sale of a property, as well as the remaining funds borrowed for improvements to the property. Thus, the purported partners' intentional tort claims and partnership and breach of fiduciary duty claims were timely asserted within the applicable statutes of limitation. Latham v. Johnson, 262 So. 3d 569, 2018 Miss. App. LEXIS 314 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 798, 2019 Miss. LEXIS 48 (Miss. 2019).

Excess insurer's fraud and other tort claims against parties involved in settling medical malpractice claims against two doctors were barred under the limitations periods in Miss. Code Ann. §§ 15-1-35, 15-1-49, which were not tolled under Miss. Code Ann. § 15-1-67 because a letter from counsel for one of the doctors, which letter was written one year before the insurer filed suit, invited the excess insurer to discuss the withdrawal of the doctor's consent to settle, which the excess insurer alleged led to its payment obligations on behalf of another doctor whose primary coverage was exhausted, and counsel's letter did not attempt to conceal anything from the excess insurer. Nat'l Union Fire Ins. Co. v. Blasio, 2008 U.S. Dist. LEXIS 42669 (N.D. Miss. May 23, 2008).

Where investors alleged that investment companies were aware of their agent's conversion of the investors' funds before the criminal activity was publicly disclosed, neither fraudulent concealment nor equitable estoppel applied to toll the limitations periods; after the agent's misconduct was discovered, the investors delayed filing their complaints against the companies until well after the limitations periods expired and there was no conduct of the companies that caused the investors' undue delay. Joe v. Minn. Life Ins.

Co., 337 F. Supp. 2d 821, 2004 U.S. Dist. LEXIS 19281 (S.D. Miss. 2004).

While the minor's savings statute, Miss. Code Ann. § 15-1-59 (Rev. 2003), applied to wrongful death suits, once suit was filed in the child's behalf, the one-year statute of limitations, Miss. Code Ann. § 15-1-35 (1995), began running; since plaintiff guardian, instead of filing an amended complaint in federal court, filed a new suit, alleging intentional torts for the first time, those claims were time-barred under § 15-1-35. Lee v. Thompson, 859 So. 2d 981, 2003 Miss. LEXIS 407 (Miss. 2003).

Where the employee was exonerated of embezzlement on June 21, 2000, and filed her complaint on June 20, 2001, the employee's malicious prosecution claim was filed one day before it would have expired, and therefore, the trial court was in error in granting the employer's motion for summary judgment. Coleman v. Smith, 841 So. 2d 192, 2003 Miss. App. LEXIS 257 (Miss. Ct. App. 2003).

In an action for malicious prosecution arising out of an earlier theft prosecution, the right of action accrues when the trial court recalls the case from the files and enters a nolle prosequi. Bankston v. Pass Rd. Tire Center, Inc., 611 So. 2d 998, 1992 Miss. LEXIS 833 (Miss. 1992).

Action for wrongful death brought by statutory heirs of decedent, alleging that decedent came into contact with toxic substances during his employment with defendant, resulting in his death, was time-barred where approximately 8 ½ years elapsed between decedent's death and filing of present action; negligence actions being governed by § 15-1-49 (6 years), actions based on intentional infliction of emotional distress being controlled by § 15-1-35 (one year), and breach of warranty actions governed by § 75-2-725 (6 years), whether defendants' acts were characterized as intentional or negligent, longest possible limitations period under Mississippi law would be 6 years. Brown v. Dow Chemical Co., 777 F. Supp. 504, 1989 U.S. Dist. LEXIS 17546 (S.D. Miss.), aff'd, 889 F.2d 272, 1989 U.S. App. LEXIS 16794 (5th Cir. Miss. 1989).

For actions in Mississippi brought under 42 USCS § 1983 accruing before Wilson v. Garcia (1985) 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938, appropriate limitations period shall be either (1) longer pre-Wilson period, commencing at time action accrued, or (2) post-Wilson one-year period, commencing with date of Wilson decision, whichever expires first. Hanner v. Mississippi, 833 F.2d 55, 1987 U.S. App. LEXIS 15691 (5th Cir. Miss. 1987).

Section 1981 action accrued on Supreme Court's denial of certiorari in 1978 and was timely filed where filing took place in 1983. Byrd v. Travenol Lab., 675 F. Supp. 342, 1987 U.S. Dist. LEXIS 11475 (N.D. Miss. 1987).

In action for malicious prosecution arising out of an earlier cattle theft prosecution, the right of action did not accrue when the trial court entered an order retiring the case to the files in November 1971, but accrued when the trial court recalled the case from the files and entered a nolle prosequi in April 1972, and action brought in February 1973 was not barred by Code 1942, § 732. Childers v. Beaver Dam Plantation, Inc., 360 F. Supp. 331, 1973 U.S. Dist. LEXIS 13418 (N.D. Miss. 1973).

Although plaintiff charged defendants with negligence and asserted such negligence as a basis for his demand, his action was in essence, one to recover on the intentional torts of abuse of criminal process, libel and slander, and since such rights accrued more than 1 year prior to the commencement of the action, they were barred by Code 1942, § 32. Childers v. Beaver Dam Plantation, Inc., 360 F. Supp. 331, 1973 U.S. Dist. LEXIS 13418 (N.D. Miss. 1973).

It is well settled law in Mississippi that a cause of action begins to run from the time of injury and not from the time of its discovery unless the running of the statute of limitations is tolled by the operation of Code 1942, § 742 (fraudulent concealment of a cause of action). Wilson v. Retail Credit Co., 325 F. Supp. 460, 1971 U.S. Dist. LEXIS 14248 (S.D. Miss. 1971), aff'd, 457 F.2d 1406, 1972 U.S. App. LEXIS 10066 (5th Cir. Miss. 1972).

4. Assault and battery.

Trial court properly granted summary judgment in favor of defendant based on the one-year statute of limitations for assault and battery claims under because plaintiff waited more than two years before he sued defendant, as plaintiff charged that defendant intentionally struck him in the face and defendant said the same during his deposition and pleaded guilty to simple assault. Evans v. Shucker's Piano & Oyster Bar, Inc., — So. 3d —, 2019 Miss. App. LEXIS 144 (Miss. Ct. App. Apr. 9, 2019).

Trial court erred in denying an estate's motion to dismiss because a purchaser's suit was barred by the statute of limitations; the purchaser failed to perfect service before the expiration of the statute of limitations; there was nothing in the record to support a finding of good cause because during the period to serve process before the statute of limitations expired, the purchaser knew the decedent was inside his house but did not exercise all of her options to serve him. Estate of Puckett v. Clement, 238 So. 3d 1139, 2018 Miss. LEXIS 124 (Miss. 2018).

Conduct alleged, though framed in negligence, was notably like assault and battery and was to be treated as such, and the fact that appellee did not allege an intentional tort was of no moment, and the one-year statute of limitations as to intentional torts applied; even if appellant breached his duty to operate the truck safely, in acting with intent to cause appellee either apprehension or harm, appellant committed civil assault, and subsequently battery, which could not be considered negligence, and the action was time-barred. Sanderson Farms, Inc. v. McCullough, 212 So. 3d 69, 2017 Miss. LEXIS 39 (Miss. 2017).

Patient's assault and battery suit, alleging that she received a blood transfusion in the hospital despite her express rejection of such procedure, was time-barred as it was not filed within one year from the date of the alleged injury, as required by Miss. Code Ann. § 15-1-35 (Rev. 2012), in that her injury occurred on the date of her surgery, November 17, 2006, and her complaint was not filed until February 4, 2011. Even assuming that the discovery rule applied, she received the medical records indicating the blood transfusion in May 2007. Henley v. Martin, 105 So. 3d 417, 2012 Miss. App. LEXIS 823 (Miss. Ct. App. 2012).

Plaintiff retired Mississippi Air National Guard (MSANG) colonel's 42 U.S.C.S. § 1985 allegations of threats, violence, and intimidation against defendant MSANG officials could not be combined with a single assault and battery to constitute a "continuing tort, thus, assault and battery claims were barred by Miss. Code Ann. § 15-1-35's one-year limitations period. Bryant v. Military Dep't, 597 F.3d 678, 2010 U.S. App. LEXIS 3221 (5th Cir. Miss.), cert. denied, 562 U.S. 893, 131 S. Ct. 287, 178 L. Ed. 2d 141, 2010 U.S. LEXIS 6263 (U.S. 2010).

Allegations of threats, violence, and intimidation comprising plaintiff's claims against the Mississippi Air National Guard under 42 U.S.C.S. § 1985 could not be combined with a single incident of assault and battery to constitute a "continuing tort"; thus, plaintiff's assault and battery claim was time barred under Miss. Code Ann. § 15-1-35 because the claim was made more than one year after the incident occurred. Bryant v. Military Dep't, 597 F.3d 678, 2010 U.S. App. LEXIS 3221 (5th Cir. Miss.), cert. denied, 562 U.S. 893, 131 S. Ct. 287, 178 L. Ed. 2d 141, 2010 U.S. LEXIS 6263 (U.S. 2010).

Plaintiff former Mississippi Air National Guard service member's assault claim against defendant Guard officials was time barred under Miss. Code Ann. § 15-1-35 because the assault allegedly occurred in 2003 and suit was filed in 2005, and while the service member argued that the assault and battery was part of a pattern of threats, harassment, and intimidation which was of a continuing nature, the assault and battery was not itself a continuing tort. Bryant v. Miss. Military Dep't, 519 F. Supp. 2d 622, 2007 U.S. Dist. LEXIS 52005 (S.D. Miss. 2007), affirmed by 597 F.3d 678, 2010 U.S. App. LEXIS 3221, 30 I.E.R. Cas. (BNA) 654 (5th Cir. Miss. 2010)supra, aff'd, 2010 U.S. App. LEXIS 3221 (5th Cir. Miss. 2010).

Employee's claim of assault against her supervisor was barred by Miss. Code Ann. § 15-1-35 because the alleged torts occurred no later than September 7, 2001, and therefore any action should have been filed by September 7, 2002; however, the employee did not file the claim until March 26, 2003. Jones v. B.L. Dev. Corp., 940 So. 2d 961, 2006 Miss. App. LEXIS 792 (Miss. Ct. App. 2006).

Plaintiff, who brought claims for assault and battery and for intentional infliction of emotional distress that should have been filed on or before July 30, 2000 did not comply with the limitation period enunciated in Miss. Code § 15-1-35, where plaintiff's complaint was filed with the court on August 13, 2002; therefore, unless the statute of limitations was tolled in some manner, plaintiff's claims were time barred. Hampton v. Gannett Co., 296 F. Supp. 2d 716, 2003 U.S. Dist. LEXIS 22788 (S.D. Miss. 2003).

The limitation period on actions for assault and battery and intentional infliction of emotional distress is one year and trial court did not err in dismissing action raising claims under those theories where plaintiff's complaint was not received in the mail by the trial court clerk until more than one year following the incident giving rise to the alleged causes of action. Slaydon v. Hansford, 830 So. 2d 686, 2002 Miss. App. LEXIS 477 (Miss. Ct. App. 2002), overruled, Blake v. Estate of Clein, 37 So. 3d 622, 2010 Miss. LEXIS 322 (Miss. 2010).

An action arising from an appendectomy was one for assault and battery and, therefore, was barred by the one year statute of limitations contained in the statute where the plaintiff alleged that she did not know she was going to undergo surgery prior to its occurrence and that any documents signed by her which consented to the surgery were against her will because she was under the influence of heavy sedation and "excruciating sickness." Goleman v. Orgler, 771 So. 2d 374, 2000 Miss. App. LEXIS 253 (Miss. Ct. App. 2000).

A cause of action for assault and battery was barred by the statute of limitations where the action was not brought within one year of the accrual of the cause of action. Disney v. Horton, 2000 U.S. Dist. LEXIS 5359 (N.D. Miss. Apr. 13, 2000).

An action for false arrest or malicious prosecution is subject to the one-year period of limitations set forth in § 15-1-35 even though these torts are not specifically enumerated in the statute. City of Mound Bayou v. Johnson, 562 So. 2d 1212, 1990 Miss. LEXIS 248 (Miss. 1990).

Combined actions of two former employees of defendant publishing company were time barred by 1-year statute of limitations in § 15-1-35 where one employee sought to hold former employer vicariously liable for alleged assault and battery by fellow employee and second employee sought to recover for alleged slanderous statements made to new employer by president of former employer. EEOC v. Southern Pub. Co., 732 F. Supp. 682, 1988 U.S. Dist. LEXIS 17306 (S.D. Miss. 1988).

Cause of action based upon wrongful death statute (§ 11-7-13), being predicated upon defendant's intentional torts, is governed by one year statute of limitations, rather than 6 year statute of limitations, as actions filed pursuant to wrongful death statute must be brought within corresponding prescription statute for which cause of action is predicated. Veselits v. Veselits, 653 F. Supp. 1570, 1987 U.S. Dist. LEXIS 1348 (S.D. Miss.), aff'd, 824 F.2d 391, 1987 U.S. App. LEXIS 10851 (5th Cir. Miss. 1987).

One year statute of limitations applied to prisoners § 1983 claim alleging he had been assaulted. Smith v. Ouzts, 629 F. Supp. 1001, 1986 U.S. Dist. LEXIS 28903 (S.D. Miss. 1986).

A medical malpractice action based on the theory of lack of informed consent, was in tort and subject to the general six-year statute of limitations as set out in Code 1942, § 722, rather than the one-year statute of limitations on assault and battery claims as set out in Code 1942, § 732. Ross v. Hodges, 234 So. 2d 905, 1970 Miss. LEXIS 1425 (Miss. 1970).

This section [Code 1942, § 732], governing the commencement of actions for assault and battery, applies to corporations. Sears, Roebuck & Co. v. Ingram, 206 So. 2d 204, 1968 Miss. LEXIS 1559 (Miss. 1968).

An action for damages against a foreign corporation arising from personal injuries allegedly sustained by the plaintiff as a consequence of assault and battery committed by an employee of the corporation was barred by the one-year statute of limitations, where the corporation was at all times amenable to the personal service of process of the courts of the state. Sears, Roebuck & Co. v. Ingram, 206 So. 2d 204, 1968 Miss. LEXIS 1559 (Miss. 1968).

Suit for personal injuries growing out of assault by state highway patrolman during the course of his duty as such patrolman, in which surety on patrolman's official bond was joined as defendant, was a suit upon the bond and not an action for assault and battery subject to the one-year limitation statute. Alexander v. Carsley, 199 Miss. 881, 25 So. 2d 709, 1946 Miss. LEXIS 257 (Miss. 1946).

Limitation of one year held inapplicable in action against sheriff and surety for damages by reason of having been shot and wounded by deputy. State use of Smith v. Smith, 156 Miss. 288, 125 So. 825, 1930 Miss. LEXIS 161 (Miss. 1930).

The one-year statute of limitations set forth in § 15-1-35 applied to an action for assault and battery against a police officer and the municipality whom he served, arising out of alleged police brutality during an arrest. The public policy considerations implicit in § 15-1-35 apply where the offender is a police officer and the corporation sought to be held liable is a municipal corporation, as well as in the case of private parties. To the extent they hold to the contrary, State Ex Rel Smith v. Smith (Miss. 1930) 125 So. 2d 825 and Alexander v. Carsley (Miss. 1946) 25 So. 2d 709 stand modified. City of Mound Bayou v. Johnson, 562 So. 2d 1212, 1990 Miss. LEXIS 248 (Miss. 1990).

If unsoundness of mind of one suing for damages for assault and battery began before expiration of day of injury, limitation did not begin until removal of disability. Pannell v. Glidewell, 146 Miss. 565, 111 So. 571, 1927 Miss. LEXIS 197 (Miss. 1927).

5. Slander and libel.

Tolling provision of the Mississippi Tort Claims Act (MTCA) statute of limitations does not toll the separate statute of limitations applicable to non-MTCA defamation claims. Therefore, a notice of claim did not toll a statute of limitations for a defamation claim against an alderman because the statute of limitations for a non MTCA case applied. Williams v. City of Belzoni, 229 So. 3d 171, 2017 Miss. App. LEXIS 126 (Miss. Ct. App. 2017).

In a case arising from a failure to renew an employment contract, an individual defamation claim against an alderman was barred by the one-year statute of limitations, and an allegation of continued slander "throughout the year" was insufficient to state an actionable claim within the limitations period. Moreover, the city was immune from liability on the defamation claim. Williams v. City of Belzoni, 229 So. 3d 171, 2017 Miss. App. LEXIS 126 (Miss. Ct. App. 2017).

Under Miss. Code Ann. 15-1-35, the former employee had until March 2, 2007, one year from the date of his termination on March 2, 2006, to file his defamation claim against his former employer, a manager, and a store services company. Because he did not file his claim until March 5, 2007, it was barred by the one-year limitations period in § 15-1-35. Davis v. Belk Stores Servs., 2009 U.S. Dist. LEXIS 487 (S.D. Miss. Jan. 6, 2009).

Former state university student's defamation claims against the university, a state board of trustees, and several professors was time barred under the one-year limitations period in Miss. Code Ann. § 15-1-35 where the student did not file his suit until almost 13 months after the alleged defamatory acts occurred. Washington v. Jackson State Univ., 532 F. Supp. 2d 804, 2006 U.S. Dist. LEXIS 97302 (S.D. Miss. 2006).

One-year statute of limitations under Miss. Code Ann. § 15-1-35 on the founder's defamation, invasion of privacy, and intentional infliction of emotional distress claims began to run at the latest on February 15, 2000 for the first article, and on April 20, 2001 for the second article, and thus, the statute of limitations expired on February 15, 2001, for the founder's claims related to the first article, and expired on April 20, 2002, for the founder's claims related to the second article; therefore, because the founder did not file his lawsuit until September 3, 2002, dismissal of his claims against the publisher was appropriate; no genuine issue of material fact existed, and the publisher was entitled to judgment as a matter of law. Lane v. Strang Communs. Co., 297 F.

Supp. 2d 897, 2003 U.S. Dist. LEXIS 24820 (N.D. Miss. 2003).

Libel claims against a coroner filed more than one year after the last publication of allegedly defamatory statements about the cause of death of a convalescent center patient were dismissed pursuant to Fed. R. Civ. P. 12(b)(6) as time-barred because, although the discovery rule applied to toll the statute for several months until the completion of an investigation of the cause of the patient's death, the filing of a state court action only tolled the one-year statute of limitations under Miss. Code Ann. § 15-1-35 during the 120 days in which the plaintiffs could serve the coroner. River Oaks Convalescent Ctr., Inc. v. Coahoma County, 280 F. Supp. 2d 565, 2003 U.S. Dist. LEXIS 23855 (N.D. Miss. 2003).

Libel claims against a coroner filed more than one year after the last publication of allegedly defamatory statements about the cause of death of convalescent center patients were dismissed pursuant to Fed. R. Civ. P. 12(b)(6) as time-barred because the continuing injury doctrine, based on lawsuits filed by patients' family members against the center and its owner arising out of the coroner's statements, did not apply to toll the one-year statute of limitations under Miss. Code Ann. § 15-1-35 because the suits constituted a "continual ill effect" rather than a "continual unlawful act." River Oaks Convalescent Ctr., Inc. v. Coahoma County, 280 F. Supp. 2d 565, 2003 U.S. Dist. LEXIS 23855 (N.D. Miss. 2003).

The discovery rule applies to defamation actions in that limited class of libel cases in which, because of the secretive or inherently undiscoverable nature of the publication the plaintiff did not know, or with reasonable diligence could not have discovered, that he or she had been defamed. Staheli v. Smith, 548 So. 2d 1299, 1989 Miss. LEXIS 410 (Miss. 1989), limited, Raddin v. Manchester Educ. Found., 175 So. 3d 1243, 2015 Miss. LEXIS 507 (Miss. 2015).

Combined actions of two former employees of defendant publishing company were time barred by 1-year statute of limitations in § 15-1-35 where one employee sought to hold former employer vicariously liable for alleged assault and battery by fellow employee and second employee sought to recover for alleged slanderous statements made to new employer by president of former employer. EEOC v. Southern Pub. Co., 732 F. Supp. 682, 1988 U.S. Dist. LEXIS 17306 (S.D. Miss. 1988).

Action by plaintiff against former employer for slander was time-barred where publication took place more than one year prior to institution of action, despite fact that plaintiff did not discover defamatory statements until more than one year after they were made. EEOC v. Southern Pub. Co., 732 F. Supp. 682, 1988 U.S. Dist. LEXIS 17306 (S.D. Miss. 1988).

In an action for libel, the statute of limitations runs from the date the allegedly defamatory material is published which, for a mass distributed publication, occurs when the periodical is substantially distributed to the public. Wildmon v. Hustler Magazine, Inc., 508 F. Supp. 87, 1980 U.S. Dist. LEXIS 16078 (N.D. Miss. 1980).

It was error for the trial court to dismiss a slander suit as barred by the one-year statute of limitations where the slander cause of action had accrued on December 9, 1976, at which time false charges against plaintiff were repeated in open court by defendant, and where, on December 9, 1977, plaintiff filed his declaration against defendant; however, another count of the declaration alleging a cause of action for libel was barred by the statute of limitations where such cause of action had accrued on August 20, 1976. Ladner v. Arrington, 374 So. 2d 831, 1979 Miss. LEXIS 2394 (Miss. 1979).

Although plaintiff charged defendants with negligence and asserted such negligence as a basis for his demand, his action was in essence, one to recover on the intentional torts of abuse of criminal process, libel and slander, and since such rights accrued more than 1 year prior to the commencement of the action, they were barred by Code 1942, § 732. Childers v. Beaver Dam Plantation, Inc., 360 F. Supp. 331, 1973 U.S. Dist. LEXIS 13418 (N.D. Miss. 1973).

In an action for damages for slander of title, the right to sue therefor accrued at the time of the execution and filing for record of the deeds and not at the time when defendant falsely and maliciously made assertions constituting a disparagement of the title. Walley v. Hunt, 212 Miss. 294, 54 So. 2d 393, 1951 Miss. LEXIS 452 (Miss. 1951).

In an action for libel against a newspaper, the statute of limitations begins to run from the date of the first publication. Forman v. Mississippi Publishers Corp., 195 Miss. 90, 14 So. 2d 344, 1943 Miss. LEXIS 132 (Miss. 1943).

The cause of action accrues where the paper is first published. Forman v. Mississippi Publishers Corp., 195 Miss. 90, 14 So. 2d 344, 1943 Miss. LEXIS 132 (Miss. 1943).

Where original petition alleged that defamatory words spoken by railroad's special agent were, "Don't you think Wales (meaning plaintiff) was into that brass stealing?" amendment, filed more than one year after alleged cause of action accrued, alleging in addition to original petition that special agent stated "I think they ought to have fired him before," and that statements were made in the presence of another person, held to introduce a new cause of action which was barred by one-year statute of limitations. Illinois C. R. Co. v. Wales, 177 Miss. 875, 171 So. 536, 1937 Miss. LEXIS 134 (Miss. 1936).

If a suit for libel contained in a letter sent by mail be brought after one year from publication, the statute cannot be voided by showing a concealment of the cause of action predicated of any act of the writer at the place where the letter was mailed. McCarlie v. Atkinson, 77 Miss. 594, 27 So. 641, 1900 Miss. LEXIS 27 (Miss. 1900).

6. Menace.

Tort of intentional infliction of emotional distress is of same type of tort as menace and therefore covered by one-year statute of limitations and not by residual 6 year statute of limitations. Guthrie v. J.C. Penney Co., 803 F.2d 202, 1986 U.S. App. LEXIS 32673 (5th Cir. Miss. 1986).

An action seeking to recover for the use of threats of criminal prosecution, in a letter, to enforce the payment of a purported civil debt, which the plaintiff charged was in violation of Code 1942, § 2365, was barred by the statute of limitations applicable to an action for menace, the complaint having been filed more than a year after the letter was received. Dennis v. Travelers Ins. Co., 234 So. 2d 624, 1970 Miss. LEXIS 1414 (Miss. 1970).

A letter from an insurer to the parents of a minor boy alleged to have participated in the damaging of buses, which letter sought payment of a proportionate share of the damage and stated that in the event of nonpayment the matter would be referred to juvenile officials for court action, fell squarely within the purview of this section [Code 1942, § 732] under the category of "menace." Dennis v. Travelers Ins. Co., 234 So. 2d 624, 1970 Miss. LEXIS 1414 (Miss. 1970).

7. Pleading.

Failure to affirmatively plead the one-year statute dealing with civil suits based upon an assault results in a waiver of that defense. Sears, Roebuck & Co. v. Devers, 405 So. 2d 898, 1981 Miss. LEXIS 2286 (Miss. 1981).

When main facts are set out in the original pleading, and an amendment is made which merely elaborates upon those facts and sets forth additional incidental facts not changing the original picture presented, although those incidental facts may be necessary to the statement of a good cause of action, amendment introduces no new cause in such sense as to let in plea of statute of limitations. Illinois C. R. Co. v. Wales, 177 Miss. 875, 171 So. 536, 1937 Miss. LEXIS 134 (Miss. 1936).

8. Failure to employ.

This section did not apply where the record showed that the plaintiff was hired by the defendant, although she never actually worked because she was instructed not to report to work on her start date. Levens v. Campbell, 733 So. 2d 753, 1999 Miss. LEXIS 32 (Miss. 1999).

Where plaintiff, recipient of certain scholarship funds as financial assistance for medical school costs and tuition, was required to fulfill 4 year service obligation at approved health care facility, and signed private practice assignment agreement with health care facility, with such agreement stating that it would be "negotiable at the end of one year", and accepted employment there, but was terminated 10 months later with the termination being memorialized as a nonrenewal of employment agreement, § 15-1-35 was not applicable to portion of complaint alleging termination of his employment, rather appropriate provision was "catch all" statute of limitations § 15-1-49. Robinson v. Coastal Family Health Center, Inc., 756 F. Supp. 958, 1990 U.S. Dist. LEXIS 18728 (S.D. Miss. 1990).

9. Invasion of privacy.

Claim of invasion of privacy had to be brought within one year of its accrual; where, at the very best, the customer alleged invasion of privacy occurred more than one year after the cause of action accrued, the customer's claim was barred. Hudson v. Palmer, 977 So. 2d 369, 2007 Miss. App. LEXIS 580 (Miss. Ct. App. 2007), cert. denied, 977 So. 2d 343, 2008 Miss. LEXIS 95 (Miss. 2008).

The statute applies to actions for invasion of privacy. McCorkle v. McCorkle, 811 So. 2d 258, 2001 Miss. App. LEXIS 9 (Miss. Ct. App. 2001).

A cause of action for invasion of privacy was barred by the statute of limitations where the action was not brought within one year of the accrual of the cause of actions. Disney v. Horton, 2000 U.S. Dist. LEXIS 5359 (N.D. Miss. Apr. 13, 2000).

10. Intentional infliction of emotional distress.

There was no error in dismissing a claim for negligent infliction of emotional distress because a complaint actually alleged a claim for intentional infliction of emotional distress, which was governed by a one-year statute of limitations. The complaint stated that a paramour's acts were reckless and without justification, the acts of the paramour evoked outrage and disgust in civilized society, and the pattern of conduct perpetrated by the paramour caused foreseeable harm. Anderson v. Ladner, 198 So. 3d 381, 2016 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 202 So. 3d 617, 2016 Miss. LEXIS 364 (Miss. 2016).

Trial court properly granted summary judgment in favor of a school and its team doctor because alumni's claims of infliction of emotional distress were time-barred; because the alumni admitted that no injury was sustained at the time of drug screens and physicals, those procedures could not be the basis for a claim of intentional infliction of emotional distress. Raddin v. Manchester Educ. Found., 175 So. 3d 1243, 2015 Miss. LEXIS 507 (Miss. 2015).

Where an employee's claim of intentional infliction of emotional distress was based on the same allegations underlying the employee's complaints of employment discrimination, the claim was time-barred because the complaint was filed more than one year after the employee was terminated. Fife v. Vicksburg Healthcare, LLC, 945 F. Supp. 2d 721, 2013 U.S. Dist. LEXIS 67748 (S.D. Miss. 2013).

Trial court properly treated a husband's claim as one for intentional infliction of emotional distress as the husband alleged that a doctor acted recklessly and that his acts evoked outrage and disgust in civilized society, resulting in great emotional distress to the husband. Moreover, the trial court properly dismissed the claim as time-barred as it was not filed within the one-year statute of limitations in Miss. Code Ann. § 15-1-35. Carter v. Reddix, 115 So. 3d 851, 2012 Miss. App. LEXIS 813 (Miss. Ct. App. 2012).

In Mississippi, intentional infliction of emotional distress claims are governed by the one-year statute of limitations found in Miss. Code Ann. § 15-1-35. Bristow v. Baskerville, 2010 U.S. Dist. LEXIS 129131 (S.D. Miss. Dec. 6, 2010), vacated, 2011 U.S. Dist. LEXIS 41860 (S.D. Miss. Apr. 12, 2011).

Trial court did not err in granting a former employer's motion for summary judgment in former employees' action alleging intentional infliction of emotional distress because the employees' claim was barred by the one-year statute of limitations found in Miss. Code Ann. § 15-1-35; the tort of intentional infliction of emotional distress is of like kind or classification as the torts enumerated in § 15-1-35, and it too carries a one-year statute of limitations, and to the extent the Norman v. Bucklew, 684 So. 2d 1246, 1256 (Miss. 1996) holds otherwise, it is expressly overruled. Jones v. Fluor Daniel Servs. Corp., 32 So. 3d 417, 2010 Miss. LEXIS 72 (Miss. 2010).

Because a former employee testified that there were continuing, unlawful acts of intentional infliction of emotional distress, the one-year statute of limitations in Miss. Code Ann. § 15-1-35 did not bar his intentional infliction of emotional distress claims against his former employer, a manager, and a store services company. Davis v. Belk Stores Servs., 2009 U.S. Dist. LEXIS 487 (S.D. Miss. Jan. 6, 2009).

Arrestee's intentional infliction of emotional distress claim against a police officer was time barred under the one-year limitations period in Miss. Code Ann. § 15-1-35 where the incident underlying the cause of action occurred well over one year before the arrestee filed suit until June 17, 2005. Ayers v. City of Holly Springs, 2008 U.S. Dist. LEXIS 30852 (N.D. Miss. Feb. 29, 2008).

Because there was repeated wrongful conduct by defendant attorney, the continuing tort doctrine applied, and the trial court did not err in tolling the statute of limitations until the date of the divorce decree. Therefore, a former husband/client's claim for intentional infliction of emotional distress for the adulteress affair between the attorney and the husband's former wife was filed within the applicable one-year statute of limitations under Miss. Code Ann. § 15-1-35. Pierce v. Cook, 992 So. 2d 612, 2008 Miss. LEXIS 398 (Miss. 2008).

Where borrowers signed a loan agreement in 1995 and brought suit against the lender in 2001, claim for intentional infliction of emotional distress, which was subject to the one-year statute of limitations, was time-barred because the intentional act that formed the basis of the claim involved the alleged misrepresentations or omissions made in 1995, at the time of the execution of the loan agreement. CitiFinancial Mortg. Co. v. Washington, 967 So. 2d 16, 2007 Miss. LEXIS 590 (Miss. 2007).

In a Title VII racial discrimination case in which the complained-of actions took place in 2004 and the employee's suit was filed in 2006, any intentional infliction of emotional distress claim was barred by the statute of limitations in Miss. Code Ann. § 15-1-35. Furthermore, any state tort claim grounded in negligence asserted by the employee would be barred by the exclusive remedy provision of the Mississippi Workers' Compensation Law. Fortenberry v. Gulf Coast Cmty. Action Agency, Inc., 2007 U.S. Dist. LEXIS 89831 (S.D. Miss. Dec. 5, 2007).

Customer's claim of intentional infliction of emotional distress related to claims for defamation, invasion of privacy, or fraud; as with his claim for invasion of privacy, the customer alleged his claim of intentional infliction of emotional distress more than a year later, and therefore his claim of intentional infliction of emotional distress was barred. Hudson v. Palmer, 977 So. 2d 369, 2007 Miss. App. LEXIS 580 (Miss. Ct. App. 2007), cert. denied, 977 So. 2d 343, 2008 Miss. LEXIS 95 (Miss. 2008).

Employee's claim of intentional infliction of emotional distress against her supervisor was barred by Miss. Code Ann. § 15-1-35 because the evidence indicated that the last instance of the supervisor's conduct occurred on September 10, 2001, and the employee did not file her complaint until January 2003. Jones v. B.L. Dev. Corp., 940 So. 2d 961, 2006 Miss. App. LEXIS 792 (Miss. Ct. App. 2006).

Employee's claim for the intentional infliction of emotional distress was barred by the one-year limitation of the statute of limitations, Miss. Code Ann. § 15-1-35 and the continuing tort doctrine did not apply because the harm alleged reverberated from one wrongful act. Bellum v. PCE Constructors Inc., 407 F.3d 734, 2005 U.S. App. LEXIS 7056 (5th Cir. Miss. 2005), cert. denied, 546 U.S. 1139, 126 S. Ct. 1150, 163 L. Ed. 2d 1002, 2006 U.S. LEXIS 794 (U.S. 2006).

The limitation period on actions for assault and battery and intentional infliction of emotional distress is one year and trial court did not err in dismissing action raising claims under those theories where plaintiff's complaint was not received in the mail by the trial court clerk until more than one year following the incident giving rise to the alleged causes of action. Slaydon v. Hansford, 830 So. 2d 686, 2002 Miss. App. LEXIS 477 (Miss. Ct. App.

2002), overruled, Blake v. Estate of Clein, 37 So. 3d 622, 2010 Miss. LEXIS 322 (Miss. 2010).

Even assuming that the statute applied to the plaintiff's action for intentional infliction of emotional distress, the action was commenced in a timely manner where the defendant's wrongful conduct began in August 1994, with the first commitment proceeding, and continued until September 1997, with the culmination of the second commitment proceeding, and the complaint was filed just seven months after the second commitment application was filed; further, though the first commitment hearing and its related subsequent events prior to the second commitment hearing occurred outside the limitation period, the violation was closely related to the violations occurring within the limitation period and recovery was permitted on the theory that all violations were part of one continuing act. McCorkle v. McCorkle, 811 So. 2d 258, 2001 Miss. App. LEXIS 9 (Miss. Ct. App. 2001).

11. Malicious prosecution.

Arrestee's malicious prosecution claim against a police officer was time barred under the one-year limitations period in Miss. Code Ann. § 15-1-35 where the arrestee was found not guilty of charges of making a threat against the officer on December 4, 2003, but did not file suit until June 17, 2005. Ayers v. City of Holly Springs, 2008 U.S. Dist. LEXIS 30852 (N.D. Miss. Feb. 29, 2008).

12. Discovery rule.

Administrator's actions alleging wrongful death, intentional infliction of emotional distress, and civil conspiracy were all barred by the one-year statute of limitations, and the discovery rule did not apply because all three of these actions had prescribed limitations periods. Sharkey v. Barber, 188 So. 3d 1245, 2016 Miss. App. LEXIS 73 (Miss. Ct. App. 2016).

Circuit court properly granted an employer's motion to dismiss–an employee's action for assault, battery, intentional and negligent infliction of emotional distress, and breach of an employment contract as untimely because, while the employee was underage when employer allegedly began to sexually abuse her, she failed to show that, when her employer allegedly sexually abused her, she was of unsound mind, legal infancy, suffered a latent injury, or that there was something secretive or inherently undiscoverable about the alleged acts or wrongdoing, the discovery rule was inapplicable where the alleged wrongful acts were physical and the employee was aware of the wrongdoing when it happened. Reeg v. Keel, 174 So. 3d 309, 2015 Miss. App. LEXIS 425 (Miss. Ct. App. 2015).

Secretive nature of extra-marital affairs rendered plaintiff wife's injuries latent such that the discovery rule applied to her alienation of affection and negligent and intentional infliction of emotional distress claims against her husband's extramarital partner so factual issues remained as to the date she discovered the affair. Bristow v. Baskerville, 2010 U.S. Dist. LEXIS 129131 (S.D. Miss. Dec. 6, 2010), vacated, 2011 U.S. Dist. LEXIS 41860 (S.D. Miss. Apr. 12, 2011).

Though the discovery rule is not explicitly codified in Miss. Code Ann. § 15-1-35 which provides the one-year statute of limitations for an intentional infliction of emotional distress claim, courts have nonetheless applied the discovery rule to claims governed by that statute. Bristow v. Baskerville, 2010 U.S. Dist. LEXIS 129131 (S.D. Miss. Dec. 6, 2010), vacated, 2011 U.S. Dist. LEXIS 41860 (S.D. Miss. Apr. 12, 2011).

13. Tolling.

Homeowners intentional tort claims against a contractor were time-barred by the statute of limitations for intentional torts because their improperly filed and later stricken amended complaint that was filed by the homeowners in a prior action against the contractor did not operate to toll the statute of limitations. Johnson v. Rhett, 250 So. 3d 486, 2018 Miss. App. LEXIS 11 (Miss. Ct. App. 2018).

RESEARCH REFERENCES

ALR.

Necessity and sufficiency of allegations in complaint for malicious prosecution or tort action analogous thereto that defendant or defendants acted without probable cause. 14 A.L.R.2d 264.

When cause of action accrues, for purpose of starting the running of the statute of limitations against an action for malicious prosecution. 87 A.L.R.2d 1047.

Scope of limitation statutes specifically governing assault and battery. 90 A.L.R.2d 1230.

What constitutes "publication" of libel in order to start running of period of limitations. 42 A.L.R.3d 807.

When statute of limitations commences to run against claim for contribution or indemnity based on tort. 57 A.L.R.3d 867.

What statute of limitations applies to action for contribution against joint tortfeasor. 57 A.L.R.3d 927.

When statute of limitations commences to run against malpractice action based on leaving foreign substance inpatients body. 70 A.L.R.3d 7.

Effect of injured employee's proceeding for workmen's compensation benefits on running of statute of limitations governing action for personal injury arising from same incident. 71 A.L.R.3d 849.

Tort claim against which period of statute of limitations has run as subject to setoff, counterclaim, cross bill, or cross action in tort action arising out of same accident or incident. 72 A.L.R.3d 1065.

Nature of termination of civil action required to satisfy element of favorable termination to support action for malicious prosecution. 30 A.L.R.4th 572.

Limitation of actions: time of discovery of defamation as determining accrual of action. 35 A.L.R.4th 1002.

Defamation action as surviving plaintiff's death, under statute not specifically covering action. 42 A.L.R.4th 272.

Tolling of statute of limitations, on account of minority of injured child, as applicable to parent's or guardian's right of action arising out of same injury. 49 A.L.R.4th 216.

Medical malpractice: statute of limitations in wrongful death action based on medical malpractice. 70 A.L.R.4th 535.

Application of "discovery rule" to postpone running limitations against action for damages from assault. 88 A.L.R.4th 1063.

Libel and slander: Charging one with breach or nonperformance of contract. 45 A.L.R.5th 739.

Actionability of malicious prosecution under 42 USCS § 1983. 79 A.L.R. Fed. 896.

Am. Jur.

32 Am. Jur. 2d, False Imprisonment § 64.

CJS.

54 C.J.S., Limitations of Actions §§ 87-89.

§ 15-1-36. Limitations applicable to malpractice action arising from medical, surgical or other professional services.

(1) For any claim accruing on or before June 30, 1998, and except as otherwise provided in this section, no claim in tort may be brought against a licensed physician, osteopath, dentist, hospital, institution for the aged or infirm, nurse, pharmacist, podiatrist, optometrist or chiropractor for injuries or wrongful death arising out of the course of medical, surgical or other professional services unless it is filed within two (2) years from the date the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered.

(2) For any claim accruing on or after July 1, 1998, and except as otherwise provided in this section, no claim in tort may be brought against a licensed physician, osteopath, dentist, hospital, institution for the aged or

infirm, nurse, pharmacist, podiatrist, optometrist or chiropractor for injuries or wrongful death arising out of the course of medical, surgical or other professional services unless it is filed within two (2) years from the date the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered, and, except as described in paragraphs (a) and (b) of this subsection, in no event more than seven (7) years after the alleged act, omission or neglect occurred:

(a) In the event a foreign object introduced during a surgical or medical procedure has been left in a patient's body, the cause of action shall be deemed to have first accrued at, and not before, the time at which the foreign object is, or with reasonable diligence should have been, first known or discovered to be in the patient's body.

(b) In the event the cause of action shall have been fraudulently concealed from the knowledge of the person entitled thereto, the cause of action shall be deemed to have first accrued at, and not before, the time at which such fraud shall be, or with reasonable diligence should have been, first known or discovered.

(3) Except as otherwise provided in subsection (4) of this section, if at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be six (6) years of age or younger, then such minor or the person claiming through such minor may, notwithstanding that the period of time limited pursuant to subsections (1) and (2) of this section shall have expired, commence action on such claim at any time within two (2) years next after the time at which the minor shall have reached his sixth birthday, or shall have died, whichever shall have first occurred.

(4) If at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be a minor without a parent or legal guardian, then such minor or the person claiming through such minor may, notwithstanding that the period of time limited pursuant to subsections (1) and (2) of this section shall have expired, commence action on such claim at any time within two (2) years next after the time at which the minor shall have a parent or legal guardian or shall have died, whichever shall have first occurred; provided, however, that in no event shall the period of limitation begin to run prior to such minor's sixth birthday unless such minor shall have died.

(5) If at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be under the disability of unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of time hereinbefore limited shall have expired, commence action on such claim at any time within two (2) years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under the disability, or shall have died, whichever shall have first occurred.

(6) When any person who shall be under the disabilities mentioned in subsections (3), (4) and (5) of this section at the time at which his right shall

have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed by reason of the disability of such person to commence action on the claim of such person beyond the period prescribed under Section 15-1-55, Mississippi Code of 1972.

(7) For the purposes of subsection (3) of this section, and only for the purposes of such subsection, the disability of infancy or minority shall be removed from and after a person has reached his sixth birthday.

(8) For the purposes of subsection (4) of this section, and only for the purposes of such subsection, the disability of infancy or minority shall be removed from and after a person has reached his sixth birthday or from and after such person shall have a parent or legal guardian, whichever occurs later, unless such disability is otherwise removed by law.

(9) The limitation established by this section as to a licensed physician, osteopath, dentist, hospital or nurse shall apply only to actions the cause of which accrued on or after July 1, 1976.

(10) The limitation established by this section as to pharmacists shall apply only to actions the cause of which accrued on or after July 1, 1978.

(11) The limitation established by this section as to podiatrists shall apply only to actions the cause of which accrued on or after July 1, 1979.

(12) The limitation established by this section as to optometrists and chiropractors shall apply only to actions the cause of which accrued on or after July 1, 1983.

(13) The limitation established by this section as to actions commenced on behalf of minors shall apply only to actions the cause of which accrued on or after July 1, 1989.

(14) The limitation established by this section as to institutions for the aged or infirm shall apply only to actions the cause of which occurred on or after January 1, 2003.

(15) No action based upon the health care provider's professional negligence may be begun unless the defendant has been given at least sixty (60) days' prior written notice of the intention to begin the action. No particular form of notice is required, but it shall notify the defendant of the legal basis of the claim and the type of loss sustained, including with specificity the nature of the injuries suffered. If the notice is served within sixty (60) days prior to the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended sixty (60) days from the service of the notice for said health care providers and others. This subsection shall not be applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name.

HISTORY: Laws, 1976, ch. 473; Laws, 1978, ch. 464, § 1; Laws, 1979, ch. 347; Laws, 1983, ch. 482, § 1; Laws, 1989, ch. 311, § 2; Laws, 1998, ch. 573, § 1; Laws, 2002, 3rd Ex Sess, ch. 2, § 5, eff from and after Jan. 1, 2003.

Editor's Notes — Laws, 1989, ch. 311,§ 7, effective from and after July 1, 1989, provides as follows:

"SECTION 7. The provisions of this act shall apply only to causes of action accruing on or after July 1, 1989."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction.
3. Applicability.
4. Discovery rule.
5. Accrual.
6. Particular cases.
7. Notice.

1. In general.

Dismissal for failure to provide notice under Miss. Code Ann. § 15-1-36(15) (Rev. 2003) ordinarily should be without prejudice. Williams v. Skelton, 6 So. 3d 428, 2009 Miss. LEXIS 138 (Miss. 2009).

Second complaint filed by a patient in a medical malpractice action was not untimely because pursuant to Miss. Code Ann. §§ 15-1-36(15) and 15-1-57 the two-year statute of limitations was tolled for the 60 day period during which the patient was required to give notice of his claim to a doctor and medical center. Caldwell v. Warren, 2 So. 3d 751, 2009 Miss. App. LEXIS 63 (Miss. Ct. App. 2009).

Notice requirement of Miss. Code Ann. § 15-1-36(15) is a pre-suit prerequisite to a claimant's right to file suit. Thomas v. Warden, 999 So. 2d 842, 2008 Miss. LEXIS 600 (Miss. 2008).

Circuit court erred in dismissing the doctor as a defendant from the beneficiaries' wrongful death claim where the time allowed by the medical malpractice statute of limitations had not yet expired when the doctor was served with the amended complaint. Long v. Mem'l Hosp. at Gulfport, 969 So. 2d 35, 2007 Miss. LEXIS 570 (Miss. 2007).

Medical malpractice suit was properly dismissed for failure to state a claim because plaintiffs did comply with Miss. Code Ann. § 11-1-58 by filing with their complaint either an expert disclosure or a certificate of counsel stating that an expert disclosure had not yet been obtained because of the running of the statute of limitations under Miss. Code Ann. § 15-1-36; strict compliance with Miss. Code Ann. § 11-1-58 was mandatory, and defendants, a medical center and the estate of a deceased doctor, which had been substituted as a defendant under Miss. R. Civ. P. 25(a)(1) after the doctor's death and reasserted the defenses raised by the doctor, had both raised as an affirmative defense plaintiffs' failure to comply with the statute. Caldwell v. N. Miss. Med. Ctr., Inc., 956 So. 2d 888, 2007 Miss. LEXIS 280 (Miss. 2007), overruled in part, Wimley v. Reid, 991 So. 2d 135, 2008 Miss. LEXIS 456 (Miss. 2008).

In a patient's negligence action, in granting the motion to amend the complaint four years after the initial suit to add the health care provider as a new party, it appeared obvious that the new "fraudulent concealment" argument was advanced as a "savings" option, because without it the statute of limitation on negligence actions would have barred any action; because the trial court erred in granting the motion to amend the complaint, the issue of whether or not the amended complaint would relate back became moot. Medicomp, Inc. v. Marshall, 878 So. 2d 193, 2004 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 917 (Miss. 2004), cert. denied, 543 U.S. 1028, 125 S. Ct. 671, 160 L. Ed. 2d 508, 2004 U.S. LEXIS 8083 (U.S. 2004).

A failure to understand the degree of permanency of an injury does not cause the statute of limitation to toll. Barry v. Thaggard, 785 So. 2d 1107, 2001 Miss. App. LEXIS 219 (Miss. Ct. App. 2001).

The six-year statute of limitations contained in § 15-1-49 does not apply to an action for medical malpractice; instead, the two-year statute of limitations contained in this section applies to such an action. Goleman v. Orgler, 771 So. 2d 374, 2000 Miss. App. LEXIS 253 (Miss. Ct. App. 2000).

Interlocutory appeal from the circuit court would be granted to determine whether the 6 year statute of limitations provided by Mississippi Code § 15-1-49, or the medical malpractice statute of limitations found in Mississippi Code § 15-1-36, applies to a medical malpractice action in which plaintiff alleged injury resulting from defendants' negligence in leaving a surgical needle in his heart during surgery performed on June 28, 1974, but of which plaintiff was unaware until June 21, 1982. Kilgore v. Barnes, 490 So. 2d 895, 1986 Miss. LEXIS 2500 (Miss. 1986).

In a medical malpractice action, physician's motion for summary judgment should be denied where the evidence in support of the motion failed to show that there were no factual issues as to whether the patient discovered within the 2 year limitations period that he had been injured by physician's failure to resect tumor. Smith v. Sanders, 485 So. 2d 1051, 1986 Miss. LEXIS 3102 (Miss. 1986).

2. Construction.

When drafting Miss. Code Ann. § 15-1-36(15), the Mississippi Legislature did not incorporate any given exceptions to the rule that would alleviate the prerequisite condition of prior written notice. Simply stated, "shall" is mandatory, while "may" is discretionary. Thomas v. Warden, 999 So. 2d 842, 2008 Miss. LEXIS 600 (Miss. 2008).

3. Applicability.

Trial court correctly dismissed a widow's negligence action against a psychiatrist who treated the widow's husband prior to his death by suicide, as there is no basis for a negligence action for wrongful death by suicide. However, the intentional act allegations in the complaint could be viable, even though those acts arose in a medical context. Irby v. Madakasira, 252 So. 3d 614, 2018 Miss. App. LEXIS 277 (Miss. Ct. App.), cert. denied, 250 So. 3d 1271, 2018 Miss. LEXIS 375 (Miss. 2018).

Cardiology practice was entitled to summary judgment in a patient's medical malpractice action because the action was untimely where, while the patient claimed she was suing for ordinary negligence and couched her complaint in terms of premises liability, the patient was in the middle of a "stress test"-a medical diagnostic test being administered by a cardiologist and several nurses-when the treadmill on which she was walking suddenly sped up, causing her to fall, the nurses assisting her with the test allegedly did not respond to her call for help, and the patient's action was filed more than two years after the fall. Moore v. Jackson Cardiology Assocs., P.A., 192 So. 3d 1050, 2015 Miss. App. LEXIS 629 (Miss. Ct. App. 2015).

One-year statute of limitations for intentional tort claims, rather than the two-year statute of limitations for negligence-claims, was applicable when a wrongful death suit against a psychiatrist alleged that the psychiatrist's intentional acts created an irresistible impulse in the decedent, a patient, to commit suicide. Irby v. Madakasira, — So. 3d —, 2017 Miss. App. LEXIS 173 (Miss. Ct. App. Mar. 28, 2017).

Patient's fraudulent conduct claims did fall under medical malpractice statute of limitations contained in Miss. Code Ann. § 15-1-36(2) because the claims arose out of the course of a medical, surgical, or other professional service as it involved a doctor's assessment, treatment, and advice, it required expert medical testimony, and it occurred in the context of a physician-patient relationship. Chitty v. Terracina, 16 So. 3d 774, 2009 Miss. App. LEXIS 560 (Miss. Ct. App. 2009).

In a patient's medical malpractice suit, which was governed by Mississippi's limitations periods in Miss. Code Ann. § 15-1-36, and Tennessee substantive law, because the suit was filed before the three-year limitations period in Tenn. Code Ann. § 29-26-116(a)(3) expired, Mississippi's treatment of foreign statutes of repose as substantive was not implicated. Huss v. Gayden, 571 F.3d 442, 2009 U.S. App. LEXIS 12665 (5th Cir. Miss. 2009), cert. denied, 559 U.S. 1007, 130 S. Ct. 1892, 176 L. Ed. 2d 365, 2010 U.S. LEXIS 2614 (U.S. 2010).

Patient's medical malpractice claim was untimely filed, Miss. Code Ann. §§ 15-1-

36(15) and 15-1-57 because the sixty-day notice period during which the patient was barred from filing suit extended the two-year statute of limitations by only sixty days, and the patient's complaint was filed after the sixty days had expired. Blessitt v. King's Daughters Hosp., 18 So. 3d 878, 2009 Miss. App. LEXIS 46 (Miss. Ct. App. 2009).

Order dismissing a patient's action against a hospital on the ground that the suit was a medical malpractice action and the two-year statute of limitations in Miss. Code Ann. § 15-1-36(1) applied was upheld because the patient's fall from an x-ray table occurred while the hospital was performing a medical, professional, or surgical service. Howell v. Garden Park Cmty. Hosp., 1 So. 3d 900, 2008 Miss. App. LEXIS 524 (Miss. Ct. App. 2008).

Where an employee killed co-workers after being referred to counseling by the employer and an employee assistance provider (EAP), the EAP was not entitled to summary judgment as to negligence claims because pre-suit notice and an expert certification were not required since the claims were for ordinary negligence, not medical malpractice; for the same reason, the statute of limitations for medical malpractice claims did not apply. Tanks v. NEAS, Inc., 519 F. Supp. 2d 645, 2007 U.S. Dist. LEXIS 70334 (S.D. Miss. 2007).

Notice requirements of Miss. Code Ann. § 15-1-36 apply only to licensed facilities. Saul v. Jenkins, 963 So. 2d 552, 2007 Miss. LEXIS 493 (Miss. 2007).

Additional determinations needed to be made as to the licensure status of a nursing home facility in a negligence suit brought by a patient; the notice provision of Miss. Code Ann. § 15-1-36(15) did not apply to non-licensed facilities. Saul v. Jenkins, 963 So. 2d 552, 2007 Miss. LEXIS 493 (Miss. 2007).

Pre-suit notice requirement imposed by Miss. Code Ann. § 15-1-36(15), which mandates that health care defendants must be notified before a malpractice suit is filed against them, is substantive in nature for Erie purposes, is applicable in federal district court diversity actions, and is not preempted because it does not conflict with Fed. R. Civ. P. 3, 4, 8, which relate to the commencement of an action but do not say anything about pre-suit notice; just as the notice requirement of Miss. Code Ann. § 15-1-36(15) is substantive in nature, so is the requirement that malpractice suits must be dismissed if proper notice is not provided as required by § 15-1-36(15). Redmond v. Astrazeneca Pharms. LP, 492 F. Supp. 2d 575, 2007 U.S. Dist. LEXIS 19860 (S.D. Miss. 2007).

Patient's amended complaint, adding a doctor and clinic as defendants, could not be treated for purposes of the added parties as an original complaint; because only the motion to amend the complaint pursuant to Miss. R. Civ. P. 15(c) was considered filed before the expiration of the two-year statute of limitations under Miss. Code Ann. § 15-1-36, when the trial court denied the motion to amend, the practical effect was that no amended complaint had ever been filed. Wilner v. White, 929 So. 2d 315, 2006 Miss. LEXIS 267 (Miss. 2006).

In an appeal of dismissal of a medical malpractice case due to limitations, the judgment was reversed because it was timely filed within the statute of limitations; the most reasonable interpretation of Miss. Code Ann. § 15-1-36(15) and § 15-1-57 tolled the two-year statute of limitations for 60 days. Pope v. Brock, 912 So. 2d 935, 2005 Miss. LEXIS 540 (Miss. 2005).

Grant of summary judgment in favor of the medical center and others in the individual's medical malpractice action was appropriate because his claim was time-barred by Miss. Code Ann. § 15-1-36. The claim was filed almost 10 years after receiving authorization and approximately 18 years after his treatment. Johnson v. Blackwood, 919 So. 2d 1053, 2005 Miss. App. LEXIS 463 (Miss. Ct. App. 2005).

Statute applied in medical malpractice suit where the tortious act occurred three years before the effective date of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-11, thereby leaving a patient two years in which to file suit. Bailey v. Al-Mefty, 807 So. 2d 1203, 2001 Miss. LEXIS 229 (Miss. 2001).

The 2-year statute of limitations set forth in § 15-1-36, rather than the general 6-year limitation period of § 15-1-49, applied to a medical malpractice action against a nurse and a company that supplied nursing personnel, where the company's sole basis for liability was the fact that it was the nurse's employer; since § 15-1-36 specifically names nurses among those covered and the company's liability was predicated solely upon the doctrine of respondeat superior, the bar of the suit against the nurse likewise barred the action as to the company. Under § 15-1-3, § 15-1-36 barred both the right of action against the nurse and the company and also barred any remedy against both parties. Lowery v. Statewide Healthcare Service, Inc., 585 So. 2d 778, 1991 Miss. LEXIS 651 (Miss. 1991).

The 2-year medical malpractice statute of limitations, set forth in § 15-1-36, applied to a situation where a nurse failed to raise the rails of a bed for a patient under heavy sedation, resulting in the patient falling out of the bed and being injured. A nurse's decision as to whether bedrails should be utilized entails a degree of knowledge concerning the patient's condition, medication, and history. The rails themselves are but another instrumentality by which the safety of patients may be insured. This plainly calls for the rendition of a medical or professional service, thus the medical malpractice statute of limitations applies to such a situation. Bell v. West Harrison County Dist., 523 So. 2d 1031, 1988 Miss. LEXIS 210 (Miss. 1988).

Medical malpractice action was not barred by statute of limitations where alleged negligent act occurred on June 28, 1974, foreign object was discovered in lining of patient's heart on June 21, 1982, and action was filed on June 14, 1984, because enactment of specific statute of limitations, § 15-1-36, dealing with malpractice tort claims, controlled over general statute, § 15-1-49; specific statute defined date of accrual of action as being date of alleged act, omission, or neglect, or date injury would or with reasonable diligence might have been first known or discovered, and provided that it applied to claims which accrued on or after July 1, 1976; fact that different definition of accrual may have been accepted with respect to general 6-year statute of limitations was beside point, because that definition had been superseded by specific statute of limitations. Kilgore v. Barnes, 508 So. 2d 1042, 1987 Miss. LEXIS 2448 (Miss. 1987).

Section 15-1-36 imposing 2-year limit from date negligence was discovered or might with reasonable diligence have been known or discovered does not apply to cases arising before statute's enactment in 1976; as to such actions, time-of-injury rule applies. Vidrine v. Enger, 752 F.2d 107, 1984 U.S. App. LEXIS 19892 (5th Cir. Miss. 1984).

4. Discovery rule.

Circuit court properly granted the doctor's motion for summary judgment and dismissed the patient's medical-malpractice complaint asserting that the doctor was negligent in performing dental-implant surgery on her as the two-year statute of limitations expired because the patient, by exercising reasonable diligence, should have reasonably discovered the doctor's alleged negligence following her self-referral to a second doctor in March 2012, and the two-year statute of limitations on the patient's claim expired by the time she filed her complaint on June 17, 2014; and, in the second doctor's follow-up note, he reaffirmed his diagnosis that the patient had experienced dental trauma. Pigott v. Taylor, 230 So. 3d 754, 2017 Miss. App. LEXIS 134 (Miss. Ct. App. 2017).

Circuit correctly held that the discovery rule did not toll the statute of limitations for the four months a patient's family was waiting on the autopsy report because the family believed a nurse practitioner's negligence played a part in the patient's death before the autopsy report was signed; an autopsy was performed based on the family's suspicions, and thus, the autopsy report was not when their suspicions first began. Waldrup v. Eads, 180 So. 3d 820, 2015 Miss. App. LEXIS 635 (Miss. Ct. App. 2015).

In a medical malpractice suit, whether the discovery rule tolls the statute of limitations requires a determination by the trier of fact regarding the date the alleged act, omission or neglect shall or with reasonable diligence might have been first discovered. Holaday v. Moore, 169 So. 3d 847, 2015 Miss. LEXIS 206 (Miss. 2015).

In a medical malpractice suit, whether the discovery rule tolls the statute of limitations requires a determination by the trier of fact regarding the date the alleged act, omission or neglect shall or with reasonable diligence might have been first discovered. Holaday v. Moore, 169 So. 3d 847, 2015 Miss. LEXIS 206 (Miss. 2015).

Trial court erred in granting summary judgment to a radiologist on the grounds that the statute of limitations, Miss. Code Ann. § 15-1-36(1), had expired prior to the patient's amending her complaint, because the patient was not aware of the radiologist's existence or role in her treatment until she requested medical records. Stringer v. Trapp, 30 So. 3d 339, 2010 Miss. LEXIS 147 (Miss. 2010).

In an issue certified to the Mississippi Supreme Court pursuant to Miss. R. App. P. 20(a), the court interpreted the application of the limitations period of Miss. Code Ann. § 15-1-36, to be tolled until plaintiff patient, through reasonable diligence, learned of the alleged negligence of her treating physician, and not just learned of her injury. Huss v. Gayden, 991 So. 2d 162, 2008 Miss. LEXIS 449 (Miss. 2008).

Under Miss. R. App. P. 20, a divided federal appellate panel of the U.S. Court of Appeals for the Fifth Circuit certified to the Mississippi Supreme Court questions as to when the two-year limitations period in Miss. Code Ann. § 15-1-36 began to run, under the discovery rule, in a medical malpractice suit alleging that a woman's latent heart disease was caused by a doctor's negligent administration of a drug intended to halt pre-term delivery. Huss v. Gayden, 508 F.3d 240, 2007 U.S. App. LEXIS 26472 (5th Cir. Miss. 2007).

In medical negligence cases, courts must focus their inquiry on when a patient, exercising reasonable diligence, should have first discovered the negligence, rather than the injury; therefore, summary judgment was properly granted to a doctor's estate in a medical malpractice case based on the discovery rule under Miss. Code Ann. § 15-1-36 since the patient was aware of an injury arising out of the prescription of certain drugs after his discharge from a hospital in 2001, and this discovery rule was different than the latent injury focus in Miss. Code Ann. § 15-1-49. Sutherland v. Estate of Ritter, 959 So. 2d 1004, 2007 Miss. LEXIS 226 (Miss. 2007).

Circuit court properly denied the doctors' motion for summary judgment on the wife's wrongful death claim where, pursuant to the discovery rule, Miss. Code Ann. § 15-1-36(2), certain information about the husband's condition were not given to the wife, and the wife acted diligently by trusting the doctors and waiting over two years before requesting the husband's medical records. Neglen v. Breazeale, 945 So. 2d 988, 2006 Miss. LEXIS 633 (Miss. 2006).

Medical malpractice case was not barred by the two-year statute of limitations under Miss. Code Ann. § 15-1-36 because the discovery rule applied where a patient visited a physician eight different times after surgery to complain about pain and loss of function in her hand; a subsequent surgery by a specialist revealed a nerve wrapped around a screw in the patient's arm; the patient's actions showed that she was diligent in discovering the source of her problem. Flores v. Elmer, 938 So. 2d 824, 2006 Miss. LEXIS 471 (Miss. 2006).

Because a patient knew of her injury the date her exploratory surgery occurred, the discovery rule did not apply to toll the running of the statute of limitations in Miss. Code Ann. § 15-1-36. Joiner v. Phillips, 953 So. 2d 1123, 2006 Miss. App. LEXIS 649 (Miss. Ct. App. 2006).

In a medical malpractice case, the patient's late knowledge of the "specifics" of his injuries, based on information provided by a subsequent examining doctor, was insufficient to toll running of the two-year statute of limitation, where the record showed he had been well aware of pain, swelling, and numbness at the site of the surgery, and he had failed to engage in due diligence to discover the causative relationship between injury and the operating physician's conduct. Thus, summary judgment for the physician was proper. Simpson v. Lovelace, 892 So. 2d 284, 2004 Miss. App. LEXIS 1007 (Miss. Ct. App. 2004).

Although the plaintiff did not file suit until more than two years after her husband's death, the statute of limitations was tolled until she was able to secure her husband's medical records, since she exercised reasonable diligence in getting those records and could not reasonably have been expected to know of the defendant's tortious conduct without the records. Sarris v. Smith, 782 So. 2d 721, 2001 Miss. LEXIS 82 (Miss. 2001).

The discovery rule applies in medical malpractice cases involving latent injuries and diseases. Williams v. Kilgore, 618 So. 2d 51, 1992 Miss. LEXIS 787 (Miss. 1992).

A cause of action for medical malpractice involving negligence which occurred in 1964 but was not discovered until 1985 was not time-barred by either § 15-1-36 or § 15-1-49 where the complaint was filed within 2 years of the discovery of the injury. Williams v. Kilgore, 618 So. 2d 51, 1992 Miss. LEXIS 787 (Miss. 1992).

The 2-year statute of limitation does not begin to run until the patient discovers or should discover that he has a cause of action. Smith v. Sanders, 485 So. 2d 1051, 1986 Miss. LEXIS 3102 (Miss. 1986).

Where a patient is aware of his injury 2 years immediately prior to filing his claim, but does not discover and could not have discovered with reasonable diligence the act or omission which caused the injury, an action does not accrue until the latter discovery is made. Smith v. Sanders, 485 So. 2d 1051, 1986 Miss. LEXIS 3102 (Miss. 1986).

In a medical malpractice action against a dentist for alleged nerve damage to his patient, the two year statute of limitations period under § 15-1-36 began to run on the date on which the patient could reasonably have discovered the permanent nerve damage resulting from the dentist's treatment. Pittman v. Hodges, 462 So. 2d 330, 1984 Miss. LEXIS 2058 (Miss. 1984).

5. Accrual.

Circuit court did not err in granting a nurse practitioner summary judgment in a medical malpractice action because the two-year limitations period had run by the time a deceased patient's daughter filed her complaint. Waldrup v. Eads, 180 So. 3d 820, 2015 Miss. App. LEXIS 635 (Miss. Ct. App. 2015).

In a malpractice suit, a trial court erred in not granting doctors', hospital's, and clinic's motion for summary judgment because the applicable statute of limitations had run; the matter accrued when a patient first suspected negligence, and the patient consulted with her sister who was a physician. Jackson Clinic for Women, P.A. v. Henley, 965 So. 2d 643, 2007 Miss. LEXIS 441 (Miss. 2007).

Two-year statute of limitations applicable to medical malpractice actions does not commence running until patient discovers or should have discovered that he has cause of action; action accrues when patient could reasonably be held to have knowledge of injury itself, cause of injury, and conduct of medical practitioner. Fortenberry v. Memorial Hosp., 676 So. 2d 252, 1996 Miss. LEXIS 324 (Miss. 1996).

Patient's medical malpractice action alleging failure to diagnose presence of tumor during emergency room admission accrued on date that another physician determined location and size of tumor, not on date tumor was removed and pathology report was received. Fortenberry v. Memorial Hosp., 676 So. 2d 252, 1996 Miss. LEXIS 324 (Miss. 1996).

A wrongful death action arising in the context of medical negligence is not measured from the date the decedent knew or should have known about the act of negligence, but rather, the cause of action does not accrue until the death of the negligently injured person. Gentry v. Wallace, 606 So. 2d 1117, 1992 Miss. LEXIS 540 (Miss. 1992), overruled, Jenkins v. Pensacola Health Trust, Inc., 933 So. 2d 923, 2006 Miss. LEXIS 208 (Miss. 2006).

The accrual of a medical malpractice action against a surgeon was not affected by the surgeon's instructing a nurse that her operative record was incorrect and needed changing, or by the surgeon's failure to inform the plaintiff's counsel during discovery of this conversation with the nurse, and thus the action was barred by § 15-1-36, where there was no showing that the surgeon's actions prevented the plaintiff's counsel from discovering all of the surgeon's conduct in his treatment of the patient. Shutze v. Pace, 557 So. 2d 776, 1990 Miss. LEXIS 16 (Miss. 1990).

6. Particular cases.

Despite the different notice requirements in the statute and the Mississippi Tort Claims Act, a daughter did not have to file different wrongful death lawsuits at different times because she could have waited until the earliest she could have filed all her claims and still comply with the statute's pre-suit notice requirement and the two-year statute of limitations; the daughter's notice served to toll the statute of limitations, and she had an additional ninety days to file suit. Estate of Davis v. Blaylock, 212 So. 3d 755, 2017 Miss. LEXIS 2 (Miss. 2017).

Wrongful-death beneficiary's suit against a nursing home was time-barred because (1) the nursing home was not named until after the statute of limitations had run, and (2) the nursing home's identity and potential liability were known when the original complaint naming a fictitious defendant was timely filed. Hopkins v. CLC of Biloxi, LLC, 229 So. 3d 742, 2017 Miss. App. LEXIS 620 (Miss. Ct. App. 2017).

Trial court properly denied a health care provider's motion to dismiss a sister's complaint because the sister was the only party to the action, and thus, the order granting her motion for extension of time to serve process became effective once the order had been signed and had left the trial court's control; the sister timely obtained an extension to serve process and timely served process within that extension, and, therefore, the statute of limitations remained tolled. Graceland Care Ctr. of New Albany, LLC v. Hamlet ex rel. Kinard, 236 So. 3d 1, 2017 Miss. LEXIS 430 (Miss. 2017).

Circuit court properly dismissed an executrix's wrongful-death lawsuit as untimely because, while the court erred in setting aside its order granting the initial extension to effect service of process, the executrix only needed to show cause when service was effected within the initial 120 days), the executrix failed to show good cause for her second extension where she and her local counsel (the only counsel of record) attempted to shift blame to her out-of-state counsel for local counsel's failure to timely effect service of process and local counsel failed to inform the circuit court of all the material facts related to the alleged conflict with the executrix's out-of-state counsel and local counsel's intent to withdraw from the case. Booth v. Williams, 200 So. 3d 1053, 2016 Miss. App. LEXIS 525 (Miss. Ct. App. 2016).

In a medical malpractice suit, the trial court properly denied summary judgment to defendant doctor based on the two-year statute of limitations because defendant's denial of participation in the patient's treatment could have constituted fraudulent concealment and ought to have tolled the statute of limitations until plaintiffs learned that an issue of fact existed regarding defendant's involvement. Holaday v. Moore, 169 So. 3d 847, 2015 Miss. LEXIS 206 (Miss. 2015).

In a medical malpractice suit, the trial court properly denied summary judgment to defendant doctor based on the two-year statute of limitations because defendant, unequivocally, both in conversations with another doctor and in an affidavit, strongly denied involvement in plaintiff patient's treatment, and it was on that basis that the patient and his attorney decided that there was no claim to be made against defendant; however, the depositions of two other doctors about defendant's involvement in the patient's treatment created a genuine issue of material fact regarding the point at which plaintiffs had notice of potential claims against defendant. Holaday v. Moore, 169 So. 3d 847, 2015 Miss. LEXIS 206 (Miss. 2015).

In a medical malpractice action, the two year limitations period of Miss. Code Ann. § 15-1-36(5) (2003) applied to complaints that alleged that the decedents were of unsound mind and did not regain soundness of mind prior to death. As the one year limitations period of § 15-1-36(6) conflicted with § 15-1-36(5), § 15-1-36(5) was applicable to prevent forfeiture. Estate of Johnson v. Graceland Care Ctr. of Oxford, LLC, 2010 Miss. LEXIS 282 (Miss. June 3, 2010).

Doctor was entitled to summary judgment in a medical malpractice action, because the statute of limitations began to run on the day that the patient was diagnosed with Guillian-Barre Syndrome and lupus and the second action was filed nearly five months after the end of the limitations period, even if the period was tolled by the patient's pre-suit notice to the doctor. Miller v. Myers, 38 So. 3d 648, 2010 Miss. App. LEXIS 320 (Miss. Ct. App. 2010).

In a medical malpractice case in which two doctors, a medical association, and a medical center filed Fed. R. Civ. P. 12(b)(6) motions to dismiss, arguing the personal representative did not have the authority to place them on notice under Miss. Code Ann. § 15-1-36 because she had not received judicial authority to place them on notice of her intent to file suit as a conservator at the time notice was given, the personal representative provided them with 60 days notice. While the personal representative had to receive judicial authorization before filing suit, Miss. Code Ann. § 93-13-27 did not require a personal representative or a conservator to obtain judicial authorization before sending a notice of intent letter. LaFarge v. Kyker, 2009 U.S. Dist. LEXIS 85656 (N.D. Miss. Sept. 18, 2009).

In a medical malpractice case in which the first action filed by the survivors and heirs of the deceased was clearly filed within the two-year statute of limitations found in Miss. Code Ann. § 15-1-36(2), but was dismissed pursuant to Miss. Code Ann. § 15-1-36(15) because they had not provided the required notice to the hospital and the healthcare provider prior to filing and the hospital and the healthcare provider filed a motion for summary judgment to dismiss the second medical malpractice suit as untimely, the Saving Statute, Miss. Code Ann. § 15-1-69, applied to the second filing, and it was not untimely. The first case had been duly commenced. Herrington v. Promise Specialty Hosp., 665 F. Supp. 2d 708, 2009 U.S. Dist. LEXIS 90509 (S.D. Miss. 2009).

Trial court properly granted a hospital's motion to dismiss a medical malpractice suit, finding no good cause for the failure of a patient's family to serve a summons upon the hospital during the 120-day time period, under Miss. R. Civ. P. 4(h), and finding that the two-year statute of limitations, under Miss. Code Ann. § 15-1-36(2), had expired. Lucas v. Baptist Mem. Hosp. - N. Miss., Inc., 997 So. 2d 226, 2008 Miss. App. LEXIS 720 (Miss. Ct. App. 2008).

Substitution of a son as the party in a wrongful death case was improper because a patient's brother lacked standing to bring the action originally; by the time the son filed an amended complaint, the limitations period in Miss. Code Ann. § 11-7-13 had expired, and the complaint did not relate back to a nullity, and therefore dismissal was warranted. Tolliver ex rel. Wrongful Death Beneficiaries of Green v. Mladineo, 987 So. 2d 989, 2007 Miss. App. LEXIS 467 (Miss. Ct. App. 2007).

Consumer's malpractice claims against medical providers, who prescribed prescription medication that the consumer alleged caused serious side effects, were dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because the consumer failed to comply with the pre-suit notice requirement imposed by Miss. Code Ann. § 15-1-36(15). Redmond v. Astrazeneca Pharms. LP, 492 F. Supp. 2d 575, 2007 U.S. Dist. LEXIS 19860 (S.D. Miss. 2007).

On August 19, 2001, the patient went into premature labor and gave birth to stillborn twins; she waited until May 18, 2004 to properly file her negligence claim against the doctors. The circuit court granted the doctors' motion for summary judgment, because the patient failed to comply with the notice requirements of Miss. Code Ann. § 15-1-36, and the statute of limitations barred the patient's claim. Stallworth v. Sanford, 921 So. 2d 340, 2006 Miss. LEXIS 91 (Miss. 2006).

Federal appeals court reversed a $3.5 million jury award to a patient who suffered pulmonary edema and congestive heart failure after taking a drug prescribed to halt premature childbirth; her medical malpractice claim was time-barred under Miss. Code. Ann. § 15-1-36, and the magistrate judge who tried the case erred by holding that her doctors waived the defense by failing to raise it in a pretrial dispositive motion. Huss v. Gayden, 465 F.3d 201, 2006 U.S. App. LEXIS 23596 (5th Cir. Miss. 2006), vacated, 571 F.3d 442, 2009 U.S. App. LEXIS 12665 (5th Cir. Miss. 2009).

Because the two-year statute of limitations in Miss. Code Ann. § 15-1-36(15) was extended 60 days pursuant to Miss. Code Ann. § 15-1-57, the individual's claim for malpractice against a medical center was timely when it was filed two years and 30 days after the date of injury. Scaggs v. GPCH-GP, Inc., 931 So. 2d 1274, 2006 Miss. LEXIS 313 (Miss. 2006).

Summary judgment was properly awarded to a doctor in a patient's medical malpractice action where the patient's amended complaint, in which she added the doctor as a defendant, was not a proper Miss. R. Civ. P. 9(h) substitution, because the amended complaint had not replaced a John Doe defendant with the doctor, and the amended complaint did not relate back to the date of the original pleading under Rules 9(h) and 15(c)(2). Santangelo v. Green, 920 So. 2d 521, 2006 Miss. App. LEXIS 75 (Miss. Ct. App. 2006).

In a medical malpractice action, on remand from a first appeal denying an amended complaint, the trial court granted summary judgment for defendants based on the two-year limitations period. However, upon a petition for rehearing, the appellate court held that based on the unique facts of the case, the amended complaint should have been treated as an original complaint as to the added parties; since the amended complaint was filed prior to the expiration of the statute of limitations (exactly two years after the alleged negligence), and a summons, along with the amended complaint, was served upon the added parties within the time period required by Miss. R. Civ. P. 4(h), the trial judge erred in granting summary judgment for defendants. Wilner v. White, 929 So. 2d 343, 2005 Miss. App. LEXIS 1033 (Miss. Ct. App. 2005), rev'd, 929 So. 2d 315, 2006 Miss. LEXIS 267 (Miss. 2006).

Where defendant waited for twenty-seven years before suing doctors who negligently operated on his leg causing a misalignment of his femur, the suit was dismissed as barred by the statute of limitations. Because defendant noticed the misalignment shortly after the operation, he failed to exercise due diligence in bringing suit. Russell v. Williford, 907 So. 2d 362, 2004 Miss. App. LEXIS 1111 (Miss. Ct. App. 2004), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 449 (Miss. 2005).

Court properly dismissed a wife's medical malpractice action against a medical center as barred by the two-year statute of limitation provided in Miss. Code Ann. § 15-1-36(1) because there was no merit to the wife's claim that the statute did not start running until the day she received an expert opinion from an oncologist. Powe v. Byrd, 892 So. 2d 223, 2004 Miss. LEXIS 1376 (Miss. 2004).

Where patient sued a hospital for negligence, but more than four years later, the patient filed a motion to amend the complaint seeking to add defendant health care provider as a new party to the suit, because negligence was the only cause of action the patient was advancing at the time of trial, the statute of limitation under Miss. Code Ann. § 15-1-36 had run prior to the filing of the amended complaint; as to relation back, the appellate court held there was simply no basis in the record upon which the trial court could have made a finding of fraudulent concealment from the patient's pleadings that would have justified the tolling of the statute of limitations, and the judgment in favor of the patient was reversed. Medicomp, Inc. v. Marshall, 878 So. 2d 193, 2004 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 917 (Miss. 2004), cert. denied, 543 U.S. 1028, 125 S. Ct. 671, 160 L. Ed. 2d 508, 2004 U.S. LEXIS 8083 (U.S. 2004).

In a medical negligence case, and an interlocutory appeal by a medical clinic, the personal representative specifically pled reliance on a "former" attorney's advice as an element of the defense to the medical clinic's motion for summary judgment and as a means to toll the statute of limitations. As such, the personal representative used the attorney-client privilege as a sword, and effectively waived the privilege as it related to the testimony the personal representative gave. Jackson Med. Clinic for Women, P.A. v. Moore, 836 So. 2d 767, 2003 Miss. LEXIS 54 (Miss. 2003).

Patient's timely filing of medical malpractice complaint, with specific instructions to clerk to withhold issuing process, tolled statute of limitations for 120-day period after filing of complaint during which service on defendants was required. Fortenberry v. Memorial Hosp., 676 So. 2d 252, 1996 Miss. LEXIS 324 (Miss. 1996).

Good cause was shown why medical malpractice plaintiff did not complete service on emergency room physician within specified time period, and thus dismissal of action was not warranted, notwithstanding fact that plaintiff failed to seek third extension of time for completing service, where plaintiff inquired several hospitals and all defense counsel as to whereabouts of physician, plaintiff asked state medical license board concerning his whereabouts, upon expiration of second extension of time, physician wrote letter advising court that he would approach court on issue of process upon locating physician, and physician was finally located by investigator hired by plaintiff. Fortenberry v. Memorial Hosp., 676 So. 2d 252, 1996 Miss. LEXIS 324 (Miss. 1996).

The filing of a medical malpractice complaint within the 2-year limitation period provided in § 15-1-36 commenced the action and tolled the statute of limitations, even though process was not issued or obtained on the defendants until 105 days later. Erby v. Cox, 654 So. 2d 503, 1995 Miss. LEXIS 236 (Miss. 1995).

In a medical malpractice action arising from the defendant's alleged negligence in performing a tubal ligation, an amendment stating a claim for breach of an oral guarantee that the patient would not become pregnant related back to the date of the original complaint and was therefore not barred by the statute of limitations, since her claim sounded in tort, it arose out of the same occurrence, and the defendant was put on notice. Hudson v. Parvin, 582 So. 2d 403, 1991 Miss. LEXIS 363 (Miss. 1991).

The trial court erred in ruling that the statute of limitations barred a medical malpractice action commenced in March 1980 where the defendant did not diagnose the plaintiff's cancer until May 1978 and there was nothing in the record to indicate that the plaintiff could have known or discovered her cancer by the exercise of reasonable diligence before that time. Tribou v. Gunn, 410 So. 2d 378, 1982 Miss. LEXIS 1865 (Miss. 1982).

7. Notice.

In a medical negligence case, the trial court erred in denying the employer's and the employees' motions to dismiss as the administratix of the decedent's estate did not comply with the presuit notice requirements in this statute because this statute required each defendant to receive presuit notice, even if there was an employer-employee relationship among defendants; strict compliance with this statute was required, and the failure to satisfy the requirements mandated dismissal without prejudice; and the legislature did not provide an exception that notice to an employer would satisfy the need to notify any employees of the impending suit. Spann v. Wood, 269 So. 3d 10, 2018 Miss. LEXIS 383 (Miss. 2018).

Parents' medical negligence action was dismissed as to the medical care providers where the parents conceded that they had not provided notice as required by Miss. Code Ann. § 15-1-36(15), but the claims against two facilities survived a motion for summary judgment as it was unclear whether those facilities were licensed hospitals or were otherwise described in Miss. Code Ann. § 15-1-36(1). Hooper v. Jurich, — F. Supp. 3d —, 2014 U.S. Dist. LEXIS 11533 (S.D. Miss. Jan. 30, 2014), dismissed, in part, — F. Supp. 3d —, 2014 U.S. Dist. LEXIS 14834 (S.D. Miss. Feb. 6, 2014).

Even if a daughter's complaint was timely, it was not preceded by the mandatory sixty days' pre-suit notice because the daughter filed her pre-suit notice the same day she filed her medical malpractice suit; thus, at a minimum, the daughter's failure to satisfy the pre-suit notice requirement mandated dismissal without prejudice. Waldrup v. Eads, 180 So. 3d 820, 2015 Miss. App. LEXIS 635 (Miss. Ct. App. 2015).

Dismissal of two doctors in a medical-malpractice action brought by the patient and her spouse was inappropriate pursuant to Miss. Code Ann. § 15-1-36(15) because the patient's rejoinder of the doctors as defendants via an amended complaint after statutory notice was provided cured the initial failure to give notice. Hans v. Mem'l Hosp., 40 So. 3d 1270, 2010 Miss. App. LEXIS 143 (Miss. Ct. App. 2010).

Plaintiff's testimony regarding his usual practice and procedure for mailing letters was insufficient to establish that notice was served in compliance with Miss. Code Ann. § 15-1-36(15) and Miss. R. Civ. P. 5, in the absence of evidence showing that the required notice letter had actually been stamped and placed in the mail. Brewer v. Wiltcher, 22 So. 3d 1188, 2009 Miss. LEXIS 582 (Miss. 2009).

Although a second amended malpractice action could be filed under the savings statute, Miss. Code Ann. § 15-1-69 since a letter did not substantially comply with the notice provisions of Miss. Code Ann. § 15-1-36(15), the 60 day tolling period was not triggered, the statute of limitations had run, and the action should have been dismissed with prejudice. Arceo v. Tolliver, 19 So. 3d 67, 2009 Miss. LEXIS 393 (Miss. 2009).

Trial court properly dismissed plaintiffs' medical negligence action for failure to comply with the notice requirement of Miss. Code Ann. § 15-1-36(15); because defendants did not have 60 days' prior written notice of the intention to begin the action, the lawsuit was not lawfully filed, and it was of no legal effect. Thomas v. Warden, 999 So. 2d 842, 2008 Miss. LEXIS 600 (Miss. 2008).

Because Miss. Code Ann. § 15-1-36(15) clearly and unambiguously stated that no action against a health care provider could be commenced without providing a 60-day pre-suit notice and because the personal representative of a decedent's estate failed to provide any written notice to a nursing care facility concerning her intent to commence a wrongful death suit, the nursing care facility was entitled to a dismissal. Forest Hill Nursing Ctr. & Long Term Care Mgmt., LLC v. Brister, 992 So. 2d 1179, 2008 Miss. LEXIS 521 (Miss. 2008).

Summary judgment was granted in favor of the doctor where the patient failed to give proper notice, Miss. Code Ann. § 15-1-36(15) as the doctor's name should have been known to the patient prior to the commencement of the lawsuit and no written notice was given to the doctor as required; the patient's failure to provide notice to the doctor was properly fatal to continuation of the suit, and dismissal with prejudice was proper. Andrews v. Arceo, 988 So. 2d 399, 2008 Miss. App. LEXIS 447 (Miss. Ct. App. 2008).

Lawsuit for medical negligence was properly dismissed because an individual did not comply with the requisite 60-day waiting period provided in Miss. Code Ann. § 15-1-36(15) because the suit was filed only 37 days after sending the notice of intent to sue, and the premature filing of the suit was in violation of the mandates of § 15-1-36(15), despite the complaint not being served on the doctors until after the 60-day period, because § 15-1-36(15) specifically provided that commencement of the suit, as distinguished from the service of process, could not have begun until after 60 days had passed since the doctors were given notice of the intention to sue. Williams v. Skelton, 6 So. 3d 433, 2008 Miss. App. LEXIS 250 (Miss. Ct. App. 2008), aff'd, 6 So. 3d 428, 2009 Miss. LEXIS 138 (Miss. 2009).

Plaintiff's medical malpractice complaint should have been dismissed because she wholly failed to provide any written notice to any medical provider concerning her intention to commence suit, as required under the plain language of Miss. Code Ann. § 15-1-36(15); although plaintiff had the constitutional right to seek redress in the state courts for the death of her daughter under the First Amendment, she also had the responsibility to comply with § 15-1-36(15). Arceo v. Tolliver, 949 So. 2d 691, 2006 Miss. LEXIS 650 (Miss. 2006).

Trial court erred in not granting a physician's and a hospital's motion to dismiss in a medical malpractice case when the executrix of the deceased patient's estate failed to comply with the notice provisions of Miss. Code Ann. § 15-1-36(15). Arceo v. Tolliver, 2006 Miss. LEXIS 385 (Miss. Aug. 3, 2006), op. withdrawn, sub. op., 949 So. 2d 691, 2006 Miss. LEXIS 650 (Miss. 2006).

In a medical malpractice action, where a patient contended that she sent a doctor notice of her claims at the best available address, that she received a response letter from the doctor's malpractice insurer stating that it would forward a copy of the notice to the doctor, and that she did not file suit until 88 days after the date on the response letter, the patient substantially complied with the medical malpractice notice provision contained in Miss. Code Ann. § 15-1-36(15). Carpenter v. Reinhard, 345 F. Supp. 2d 629, 2004 U.S. Dist. LEXIS 26581 (N.D. Miss. 2004).

RESEARCH REFERENCES

ALR.

Statute of limitations applicable to malpractice action against physician, surgeon, dentist, or similar practitioner. 80 A.L.R.2d 320.

When statute of limitations commences to run against malpractice action against physician, surgeon, dentist, or similar practitioner. 80 A.L.R.2d 368.

Applicability, to negligence action against hospital, of statute of limitations applicable to malpractice and related actions against physicians, surgeons, and the like. 89 A.L.R.2d 1180.

Applicability, in action against nurse in her professional capacity, of statute of limitations applicable to malpractice. 8 A.L.R.3d 1336.

When statute of limitations commences to run against malpractice action based on leaving foreign substance in patient's body. 70 A.L.R.3d 7.

Medical malpractice: amendment purporting to change the nature of the action or theory of recovery, made after statute of limitations has run, as relating back to filing of original complaint. 70 A.L.R.3d 82.

Statute of limitations relating to medical malpractice actions as applicable to actions against unlicensed practitioner. 70 A.L.R.3d 114.

When statute of limitations begins to run against malpractice action in connection with sterilization or birth control procedures. 93 A.L.R.3d 218.

When statute of limitations begins to run in dental malpractice suits. 3 A.L.R.4th 318.

Time of discovery as affecting running of statute of limitations in wrongful death action. 49 A.L.R.4th 972.

Medical malpractice: applicability of "foreign object" exception in medical malpractice statutes of limitation. 50 A.L.R.4th 250.

Medical malpractice: statute of limitations in wrongful death action based on medical malpractice. 70 A.L.R.4th 535.

Medical malpractice: when limitations period begins to run on claim for optometrist's malpractice. 70 A.L.R.4th 600.

Liability of osteopath for medical malpractice. 73 A.L.R.4th 24.

"Dual Capacity Doctrine" as basis for employee's recovery for medical malpractice from company medical personnel. 73 A.L.R.4th 115.

Medical malpractice in connection with diagnosis, care, or treatment of diabetes. 43 A.L.R.5th 87.

Medical malpractice statutes of limitation minority provisions. 71 A.L.R.5th 307.

Insurance agents or brokers as professionals or nonprofessionals for purposes of malpractice statutes of limitations. 121 A.L.R.5th 365.

Timeliness of action under medical malpractice statute of repose, aside from effect of fraudulent concealment of patient's cause of action. 14 A.L.R.6th 301.

Effect of Fraudulent or Negligent Concealment of Patient's Cause of Action on Timeliness of Action Under Medical Malpractice Statute of Repose. 19 A.L.R.6th 475.

When does cause of action accrue for medical malpractice claim under Civil Rights Act of 1871 (42 USCS § 1983). 52 A.L.R. Fed. 780.

Am. Jur.

25 Am. Jur. 2d, Drugs and Controlled Substances § 247.

51 Am. Jur. 2d, Limitation of Actions §§ 121 et seq.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 140 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 278.3 (complaint, petition, or declaration-podiatric malpractice); Forms 351 et seq. (limitations of action).

4 Am. Jur. Trials, Solving Statutes of Limitation Problems §§ 34 et seq.

26 Am. Jur. Proof of Facts 3d 185, Discovery Date in Medical Malpractice Litigation.

Jackson, Legislative reform of statutes of limitations in Mississippi: proposed interpretations, possible problems. 9 Miss College LR 231, Spring 1989.

CJS.

54 C.J.S., Limitations of Actions §§ 205, 206.

70 C.J.S., Physicians, Surgeons, and Other Health Care Providers §§ 94.

Law Reviews.

1979 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 887, December 1979.

1982 Mississippi Supreme Court Review: Torts: Statute of Limitations in Medical Malpractice Cases. 53 Miss. L. J. 175, March 1983.

Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

§ 15-1-37. Limitations applicable to actions to recover property sold by order of chancery court or pursuant to decree of partition.

An action shall not be brought to recover any property (a) sold by order of a chancery court, where the sale is in good faith and the purchase money paid, or (b) partited in kind or sold for partition where the purchase money is paid, unless such action is brought within two years after possession is taken by the purchaser under the sale of the property or by the taker under the decree of partition.

HISTORY: Codes, 1857, ch. 57, art. 29; 1871, § 2173; 1880, § 2693; 1892, § 2760; 1906, § 3122; Hemingway's 1917, § 2486; 1930, § 2315; 1942, § 745; Laws, 1954, ch. 218, § 1, eff 60 days after passage (approved April 20, 1954).

Cross References — Sales under decrees of chancery courts, see §§ 11-5-91 to 11-5-117.

Provision for suspension of inconsistent laws regarding foreclosure of mortgaged property in certain emergency situations, see § 89-1-319.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Defects subject to limitation.
3. Good faith.
4. —Subsequent purchasers.
5. Purchase price, payment of.
6. Persons affected.
7. Rights and interests affected.

1. In general.

Where the chancery court approved the sale of the first parcel of the ward's land in 1994 and approved the sale of the remaining acres of the ward's land in 1998, and the petition to set aside these deeds was not filed until 2004, after the ward passed away, without question the petition to set aside the deeds fell outside of the statute of limitations; however, both the conservatorship and the subsequent land sales were correctly deemed invalid by the lower court because procedural requirements were not met, and thus the statute of limitations did not apply. Russell v. Allen (In re Allen), 962 So. 2d 737, 2007 Miss. App. LEXIS 519 (Miss. Ct. App. 2007).

In a suit to set aside a final decree confirming a sale of land by a special commissioner for division of proceeds in a partition suit, the trial court erred in sustaining both a special demurrer raising the affirmative defenses of limitations of actions, laches and bona fide purchaser for value, and a motion to dismiss raising the affirmative defenses of res judicata, laches and estoppel, where none of the facts upon which the special demurrer and motion to dismiss could dependably rest had been averred in the complaint. Complainants' affirmative allegations that one or more of them had been in possession since the sale and that none of them had accepted the proceeds of the partition sale also raised a question of fact to be determined upon proof. Mosby v. Gandy, 375 So. 2d 1024, 1979 Miss. LEXIS 2470 (Miss. 1979).

In a suit by a devisee to remove and cancel clouds on her title to an undivided 1-2 interest in minerals in land which was sold at an execution sale, the 2-year statute of limitations on actions to recover property sold by order of the chancery court was inapplicable since "order of the chancery court" contemplates an order entered after compliance with Code 1972, § 91-7-195, providing that a petition may be filed with the court by creditors of a decedent having registered claims against an estate for sale of land or personal property of the decedent for the payment of debts, and Code 1972, § 91-7-197, providing that all interested parties shall be cited by summons or publication specifying the time and place of the hearing on the petition. Simmons v. Abney, 292 So. 2d 168, 1974 Miss. LEXIS 1762 (Miss. 1974).

This section [Code 1942, § 745] barred an attack on the validity of a 1942 sale of interest of minors in certain land which sale was made by a special commissioner of the chancery court pursuant to that court's decree. Conner v. Conner, 238 Miss. 471, 119 So. 2d 240, 1960 Miss. LEXIS 430 (Miss. 1960).

This section [Code 1942, § 745] as it read in 1909 was inapplicable to partition proceedings. Hollingsworth v. Central Oil Co., 236 Miss. 779, 112 So. 2d 518, 1959 Miss. LEXIS 376 (Miss. 1959).

Where an attempted foreclosure of a vendor's lien was void as to the owners of recorded mineral deeds, who were not made parties to the proceedings, this section [Code 1942, § 745] did not preclude such owners from attacking the foreclosure sale. Anderson v. Boyd, 229 Miss. 596, 91 So. 2d 537, 1956 Miss. LEXIS 642 (Miss. 1956).

Two-year statute of limitations for recovery of property sold by order of court does not apply, unless purchase money was paid and sale was made in good faith. Dendy v. Commercial Bank & Trust Co., 143 Miss. 56, 108 So. 274, 1926 Miss. LEXIS 243 (Miss. 1926).

This section [Code 1942, § 745] does not apply to a suit to cancel as a cloud defendant's title, acquired through a sale under a decree in partition proceedings. The ten years' statute applies. Foster v. Gulf Coast Canning Co., 71 Miss. 624, 15 So. 931, 1893 Miss. LEXIS 131 (Miss. 1893).

2. Defects subject to limitation.

Possession of land sold at guardian's sale, which was made in good faith, having been taken more than two years prior to institution of suit attacking validity of the sale, it was too late to complain even if there had been irregularities in the sale. Jones v. Crawford, 201 Miss. 791, 30 So. 2d 513, 1947 Miss. LEXIS 448 (Miss. 1947).

This section [Code 1942, § 745] has no application to land erroneously described in the decree of sale. Logan v. Mississippi Abstract Co., 190 Miss. 479, 200 So. 716, 1941 Miss. LEXIS 68 (Miss. 1941).

Where chancellor had jurisdiction of minor heirs and subject-matter in administratrix' petition for leave to sell, any defects in process and insufficiency of time held not to prevent application of two years' limitations. Neely v. Craig, 162 Miss. 712, 139 So. 835, 1932 Miss. LEXIS 147 (Miss. 1932).

Where court having full constitutional jurisdiction has acted under procedure adjudged sufficient, and parties have been served with notice and have failed to act within period prescribed, court's judgment cannot be collaterally attacked. Neely v. Craig, 162 Miss. 712, 139 So. 835, 1932 Miss. LEXIS 147 (Miss. 1932).

Commissioner's sale to grandfather who was next friend of plaintiff, in partition suit, who paid the then reasonable value of the land, not void but voidable at plaintiff's election within the time allowed. Memphis Stone & Gravel Co. v. Archer, 120 Miss. 453, 82 So. 315, 1919 Miss. LEXIS 107 (Miss. 1919).

This section [Code 1942, § 745] is inapplicable where chancery court without jurisdiction to make order of sale. Moores v. Flurry, 87 Miss. 707, 40 So. 226, 1905 Miss. LEXIS 190 (Miss. 1905).

The section [Code 1942, § 745] applies as well to sales made in disregard of the Constitution as to those in violation of statutes. Bradley v. Villere, 66 Miss. 399, 6 So. 208, 1889 Miss. LEXIS 114 (Miss. 1889).

This section [Code 1942, § 745] is applicable in case the court were without jurisdiction to appoint the guardian who made the sale. Hall v. Wells, 54 Miss. 289, 1877 Miss. LEXIS 1 (Miss. 1877); Jeffries v. Dowdle, 61 Miss. 504, 1884 Miss. LEXIS 121 (Miss. 1884).

This section [Code 1942, § 745] applies even if notice were not given to the parties defendant. Summers v. Brady, 56 Miss. 10, 1878 Miss. LEXIS 33 (Miss. 1878).

The section [Code 1942, § 745] was meant to cure all defects, no matter from what cause, whether before or after decree, unless suit for the land be brought within the prescribed time. Morgan v. Hazlehurst Lodge, 53 Miss. 665, 1876 Miss. LEXIS 132 (Miss. 1876).

This section [Code 1942, § 745] applies to invalidities which have crept into sales made in good faith, where the purchase-money has been paid. Richardson v. Brooks, 52 Miss. 118, 1876 Miss. LEXIS 176 (Miss. 1876).

3. Good faith.

Suit to set aside sales by a guardian in good faith under authority of the court is barred by running of statutory period since the ward's majority. Floyd v. Floyd, 239 Miss. 69, 121 So. 2d 133, 1960 Miss. LEXIS 268 (Miss. 1960).

In the absence of an allegation and proof that the sale was not in good faith, good faith would be presumed. Hollingsworth v. Central Oil Co., 236 Miss. 779, 112 So. 2d 518, 1959 Miss. LEXIS 376 (Miss. 1959).

Where a purchaser is not one in good faith, this section [Code 1942, § 745] is not applicable. Box v. House, 212 Miss. 154, 54 So. 2d 218, 1951 Miss. LEXIS 437 (Miss. 1951).

Where sale of land to pay debts is shown to have been made under a solemn decree of chancery court, with proper notice and appearance by all parties in interest, and that decree of confirmation was unappealed from, the presumption is that chancery court had acted in good faith in ordering the sale and that administratrix was guilty of no bad faith in conducting the sale and conveying the property to the purchaser, the court necessarily adjudicating that the property had brought a fair price in confirming the sale. Gill v. Johnson, 206 Miss. 707, 40 So. 2d 600, 1949 Miss. LEXIS 295 (Miss. 1949).

This section [Code 1942, § 745] only applies where the purchase is in good faith, and the burden of proof of good faith is on the purchaser. Shannon v. Summers, 86 Miss. 619, 38 So. 345, 1905 Miss. LEXIS 41 (Miss. 1905); Jeffries v. Dowdle, 61 Miss. 504, 1884 Miss. LEXIS 121 (Miss. 1884).

4. —Subsequent purchasers.

Where throughout the proceeding of an administrator's action to sell real estate for payment of a decedent's debts, including the decree of sale and commissioner's deed, one acre of the three acres of land owned by decedent at her death was erroneously described, this section [Code 1942, § 745] would not protect a bona fide purchaser of the land as to such misdescribed acre of land, notwithstanding that the sale was in good faith and the purchase money paid and that the purchaser was in possession for more than two years. Cusimano v. Spencer, 194 Miss. 509, 13 So. 2d 27, 1943 Miss. LEXIS 90 (Miss. 1943).

This section [Code 1942, § 745] cannot be invoked by subsequent vendees as innocent purchasers for value, where the original purchaser did not act in good faith and it was manifest from the record of the proceedings that the sale was made in disregard of the constitution applicable thereto. Shannon v. Summers, 86 Miss. 619, 38 So. 345, 1905 Miss. LEXIS 41 (Miss. 1905).

Where the proceedings are regular on the record, even if the sale were not in good faith, yet if the land has passed to a bona fide purchaser, he acquires title independently of the section. [Code 1942, § 745]. Sanders v. Sorrell, 65 Miss. 288, 3 So. 661, 1887 Miss. LEXIS 56 (Miss. 1887).

The good faith of a purchaser from a purchaser has nothing whatever to do with the application of the statute. Jeffries v. Dowdle, 61 Miss. 504, 1884 Miss. LEXIS 121 (Miss. 1884).

5. Purchase price, payment of.

Where throughout the proceedings of an administrator's action to sell real estate to pay decedent's debts, including decree of sale and commissioner's deed, one acre of the three acres of land sold was erroneously described, this section [Code 1942, § 745] would not protect a bona fide purchaser of the land as to such misdescribed acre, notwithstanding that the sale was in good faith, that the purchase money was paid and that the purchaser was in possession for more than two years. Cusimano v. Spencer, 194 Miss. 509, 13 So. 2d 27, 1943 Miss. LEXIS 90 (Miss. 1943).

Where the holder of a trust deed acquired the property at foreclosure sale upon his compliance with his bid by paying the back taxes and crediting the debt with the balance of his bid, such payment and credits were a payment of consideration, under the statute [Code 1930, § 2315]. Hubbard v. Massey, 192 Miss. 95, 4 So. 2d 230, 4 So. 2d 494, 1941 Miss. LEXIS 3 (Miss. 1941).

Payment of agreed cash price and deeding of agreed quantity of land, as price of other land purchased in good faith, held "payment of purchase price" within statute [Code 1942, § 745]. Neely v. Craig, 162 Miss. 712, 139 So. 835, 1932 Miss. LEXIS 147 (Miss. 1932).

Chancery court's power of providing for payment in part of debts in commodities or land, where minors' interests are involved, ought to be exercised with great caution. Neely v. Craig, 162 Miss. 712, 139 So. 835, 1932 Miss. LEXIS 147 (Miss. 1932).

Creditor purchasing at judicial sale may make payment within meaning of limitations statute by applying debt due him in payment of bid. Pennington v. Purcell, 155 Miss. 554, 125 So. 79, 1929 Miss. LEXIS 339 (Miss. 1929).

A purchaser under a decree of the chancery court cannot defend under this section [Code 1942, § 745] unless he has made actual payment of the purchase money, and a subterfuge or sham payment will not aid him. Gibson v. Currier, 83 Miss. 234, 35 So. 315, 1903 Miss. LEXIS 38 (Miss. 1903).

A purchaser at execution sale who has not paid the entire purchase money, but has been credited with a part of it on an individual debt due him from the executor, cannot invoke this section [Code 1942, § 745]. Sharpley v. Plant, 79 Miss. 175, 28 So. 799, 1901 Miss. LEXIS 3 (Miss. 1901).

6. Persons affected.

Ejectment suit by devisees under will was barred by this section [Code 1942, § 745] where, more than two years prior thereto, real estate of testator was sold by decree of chancery court to pay debts in absence of sufficient personalty therefor, at which time sale was duly confirmed, the purchaser went into the actual possession of the property after having paid the purchase money and received a deed therefor. Gill v. Johnson, 206 Miss. 707, 40 So. 2d 600, 1949 Miss. LEXIS 295 (Miss. 1949).

The fact that the widow and adopted daughter of an intestate were not parties to a proceeding against the administratrix to foreclose a deed of trust on realty constituting a part of the estate, did not save them from the bar of the statute, since they were not necessary parties where the estate had been declared insolvent, the realty was in the possession of the administratrix, who was also the widow of the decedent but was made a party only as administratrix, and the daughter advised her regarding the foreclosure matters. Hubbard v. Massey, 192 Miss. 95, 4 So. 2d 230, 4 So. 2d 494, 1941 Miss. LEXIS 3 (Miss. 1941).

Bar set up by statute against action to recover property sold by chancery court's order applies only against parties to record or their privies. Pennington v. Purcell, 155 Miss. 554, 125 So. 79, 1929 Miss. LEXIS 339 (Miss. 1929).

Statute limiting the time for recovery of land sold under chancery order inapplicable to attack by infant, because of bad faith of next friend, of sale for partition. Smith v. Strickland, 139 Miss. 1, 103 So. 782, 1925 Miss. LEXIS 117 (Miss. 1925).

Limitations do not run against remaindermen while life tenant lives; this section [Code 1942, § 745] inapplicable to suit by remaindermen to cancel deed and recover land sold under erroneous order of court. Clark v. Foster, 110 Miss. 543, 70 So. 583, 1915 Miss. LEXIS 68 (Miss. 1915).

Chancery court was without jurisdiction to order sale of real estate at suit of life tenant against infant remaindermen, and statute of limitations did not commence to run against action of ejectment by remaindermen until termination of the life estate. Hoskins v. Ames, 78 Miss. 986, 29 So. 828, 1901 Miss. LEXIS 144 (Miss. 1901).

This section [Code 1942, § 745] does not debar a minor interested in lands sold in partition proceedings from filing a bill of review at any time within two years after coming of age, since it does not apply to such proceedings. Martin v. Gilleyler, 70 Miss. 324, 12 So. 254 (Miss. 1892).

7. Rights and interests affected.

Two-year statute cannot be invoked by purchaser at commissioner's sale and at execution sale to bar right to foreclose paramount lien. Pennington v. Purcell, 155 Miss. 554, 125 So. 79, 1929 Miss. LEXIS 339 (Miss. 1929).

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Judicial Sales § 134.

CJS.

50A C.J.S., Judicial Sales §§ 80-86.

54 C.J.S., Limitations of Actions §§ 57, 60, 61, 66.

§ 15-1-39. Limitations applicable to actions involving certain trusts.

Bills for relief, in case of the existence of a trust not cognizable by the courts of common law and in all other cases not herein provided for, shall be filed within ten years after the cause thereof shall accrue and not after, saving, however, to all persons under disability of infancy or unsoundness of mind, the like period of time after such disability shall be removed. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one years.

HISTORY: Codes, 1857, ch. 57, art. 31; 1871, § 2175; 1880, § 2696; 1892, § 2763; 1906, § 3125; Hemingway's 1917, § 2489; 1930, § 2316; 1942, § 746.

Cross References — Jurisdiction of chancery court over estates, see § 9-5-83.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Existence of trust.
3. Express trust.
4. Implied and constructive trusts.
5. Other cases of equitable cognizance.

1. In general.

Beneficiaries' action was not purely and exclusively equitable and they sought no equitable relief and did not seek to impose a constructive trust; the beneficiaries sought purely legal relief, namely compensatory and punitive money damages, such that the cause of action and the remedy of the case were not purely and exclusively equitable and the chancellor did not err in applying the general six-year statute of limitations of Miss. Code Ann. § 15-1-49. Winters v. AmSouth Bank, 964 So. 2d 595, 2007 Miss. App. LEXIS 582 (Miss. Ct. App. 2007).

Trial court could limit evidence of alleged wrongdoing on part of fiduciary to acts occurring less than ten years prior to date suit was filed, which was applicable statute of limitations period. Wholey v.

Cal-Maine Foods, 700 So. 2d 291, 1997 Miss. LEXIS 300 (Miss. 1997).

The 10-year limitation of § 15-1-39 is applicable to both express and implied trusts. However, the application of § 15-1-39 is limited in that the cause of action and the remedy of the case must be purely and exclusively equitable or the general 6-year statute of limitations will be applied. Wholey v. Cal-Maine Foods, Inc., 530 So. 2d 136, 1988 Miss. LEXIS 356 (Miss. 1988).

In an action seeking to compel a perfect inventory, void certain conveyances, partition property, and establish a claim against an estate, the chancellor improperly sustained a plea of the statute of limitations § 15-1-39 as to a trust, where there was no proof to support the same. Maxwell v. Yuncker, 419 So. 2d 580, 1982 Miss. LEXIS 2165 (Miss. 1982).

Whatever may be the rule elsewhere, it is settled in this state that no statute of limitations runs against a legatee or distributee pending the administration of the estate. Peebles v. Acker, 70 Miss. 356, 12 So. 248, 1892 Miss. LEXIS 110 (Miss. 1892).

2. Existence of trust.

The delivery by a donor to a bank in trust of certain promissory notes secured by mortgage notwithstanding the bank's incapacity to act as trustee, and the subsequent assumption by the donor of the note and actions in connection therewith for the benefit of the beneficiary constituted a trust in regard to the notes and their intended security not cognizable by the courts of common law within the purview of the ten-year statute of limitations, so that an action brought within ten years against the donor's executors for loss of such notes by his unauthorized act was not barred. Yandell v. Wilson, 182 Miss. 867, 183 So. 382, 1938 Miss. LEXIS 202 (Miss. 1938).

Bequest providing that devisees should deliver to widow annually 1 bale of cotton, was not a trust within this section [Code 1942, § 746], since the implied promise to deliver such cotton constituted a contract, and suit for breach must be brought within 6 years. Roberts v. Burwell, 117 Miss. 451, 78 So. 357, 1918 Miss. LEXIS 190 (Miss. 1918).

Since a vendor could have brought an action at law for the purchase money, his action to enforce his lien did not rest upon the existence of a trust not cognizable by the courts of the common law, and, accordingly, this section [Code 1942, § 746] was not applicable. Washington v. Soria, 73 Miss. 665, 19 So. 485, 1896 Miss. LEXIS 190 (Miss. 1896).

3. Express trust.

Where a deceased legal guardian of her son who is non compos mentis used the proceeds from sale of property of the ward, to purchase land in her own name, this did not create an express trust in favor of her ward and a suit commenced more than thirty-one years after the purchase, that being the time when the cause of action arose, was barred by the statute of limitations. Sullivan v. Nobles, 211 Miss. 330, 51 So. 2d 736, 1951 Miss. LEXIS 360 (Miss. 1951).

Where it appeared that on the death of one partner, the surviving partner agreed to hold the shares of two of the decedent's heirs as an active trust for their benefit until demand was made by them for payment of the principal, that all of the parties to the agreement had died and the estate of the surviving partner had been administered, with due notice given to creditors, a bill by the heirs of the heirs of the first deceased partner, seeking a money decree from the administratrix and beneficiaries of the surviving partner more than twenty-one years after the making of the agreement and more than ten years after the death of the beneficiaries, was barred by this statutory limitation. Whitaker v. Davenport, 193 Miss. 523, 10 So. 2d 202, 1942 Miss. LEXIS 135 (Miss. 1942).

Where the purpose of a trust agreement was to meet the needs of the beneficiaries during their lives, the object expired upon their deaths, thereby maturing the obligation, and setting the statute of limitations running without any repudiation on the part of the trustee. Whitaker v. Davenport, 193 Miss. 523, 10 So. 2d 202, 1942 Miss. LEXIS 135 (Miss. 1942).

A ill which expressly charges the estate with the payment of debts, and empowers the executor to sell the whole or any part of the estate for payment of such debts, creates in equity an express trust, covered by the provisions of this section. [Code 1880 § 2696]. Abbay v. Hill, 64 Miss. 340, 1 So. 484, 1886 Miss. LEXIS 70 (Miss. 1886).

The section [Code 1880, § 2696] does not run until there be a cause of action. Hence, it does not run in cases of express trust which are subsisting and acknowledged. Cooper v. Cooper, 61 Miss. 676, 1884 Miss. LEXIS 152 (Miss. 1884).

A legacy which is made by the will an express charge on real estate devised constitutes an express trust, cognizable only in equity as to enforceability against the realty, and is, therefore, subject to this section. Templeton v. Tompkins, 45 Miss. 424, 1871 Miss. LEXIS 91 (Miss. 1871).

4. Implied and constructive trusts.

Siblings' claim seeking an adjudication of their ownership of property as beneficiaries of a constructive trust was barred because the siblings waited nearly twenty years to file their action; all of the parties to the deed in question were no longer able to express and/or take action to clarify the nature of the instrument which appeared nowhere else in writing and of record in the land deeds. Manning v. Perry, 242 So. 3d 972, 2017 Miss. App. LEXIS 626 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 71, 2018 Miss. LEXIS 226 (Miss. 2018).

In an action by a widow to recover 50 percent of various mineral rights purchased by her deceased husband in a joint venture with defendant's deceased husband in which the theory of recovery was an implied trust or right to a partnership accounting, the chancery court erroneously granted judgment for plaintiff, where the cause of action was barred by the applicable ten year statutes of limitation at least as early as 1962, which was 10 years after the death of defendant's husband. Stebbins v. Hayes, 379 So. 2d 898, 1980 Miss. LEXIS 1836 (Miss. 1980).

A partition suit filed in 1967, and based upon the alleged existence of a trust arising in 1942 by implication of law, and in which there was no allegation or suggestion of fraud or concealment, the deeds evidencing the transactions having been placed upon the public records, was barred by the statute of limitations, the statute having begun to run upon the date in 1942 on which a right first accrued to have the trust judicially established. Calloway v. Showers, 231 So. 2d 797, 1970 Miss. LEXIS 1610 (Miss. 1970).

Any claim that an adminstratrix' decedent, the heir to certain estate property, might have had to the acquisition of various properties by defendant coheirs which were acquired during the decedent's minority and for which no claim was filed more than 10 years after he reached his majority was clearly barred by the section [Code 1942, § 746] inasmuch as there was no fraud shown in the acquisition of such property or any wrongful concealment of the transaction. Barrett v. Turner, 229 So. 2d 563, 1969 Miss. LEXIS 1249 (Miss. 1969).

Where a father remained in possession of land, which he had conveyed by warranty deed to his son in 1937 allegedly as security for an indebtedness, and exercised complete dominion over the land until his death, and thereafter the father's heirs retained possession of the land and dealt with it as part of the father's estate until 1951, and the son recognized the equitable ownership of the heirs subject to his right of reimbursement for the loans made to the father until his refusal to divide with them money received from the oil, gas and mineral leases which he executed in 1955, an action by the heirs in 1956 against the son to establish a resulting trust for the benefit of the heirs was not barred by this section. Trigg v. Trigg, 233 Miss. 84, 101 So. 2d 507, 1958 Miss. LEXIS 360 (Miss. 1958).

The repudiation of an implied or constructive trust is not necessary to set the statute of limitations in operation, but the statute begins to run from the time the act or acts were committed by which the actor became chargeable. Thames v. Holcomb, 230 Miss. 387, 92 So. 2d 548, 1957 Miss. LEXIS 381 (Miss. 1957).

Since a grantee, who had promised to reconvey to other heirs their interest in realty if they would convey the property to him in order that he could obtain a loan thereon, was under a duty to reconvey the property upon the date of obtaining the loan, the cause of action of the heirs, who were all adults, on the implied or constructive trust accrued on that date, so that an action brought thereon more than 20 years thereafter was barred. Thames v. Holcomb, 230 Miss. 387, 92 So. 2d 548, 1957 Miss. LEXIS 381 (Miss. 1957).

Where the purchaser of property buys it with the money of another, the trust thereby created in favor of the party whose money is thus used is an implied, resulting or constructive trust, and not an express trust, and is subject to the statute of limitations. Sullivan v. Nobles, 211 Miss. 330, 51 So. 2d 736, 1951 Miss. LEXIS 360 (Miss. 1951).

No repudiation of an implied or constructive trust is necessary to set the statute of limitations in operation, the statute, in the absence of fraud and concealment, running from the time when the act was done by which the party became chargeable as trustee by implication, which is to say, from the time when the cestui que trust could have enforced his right by suit. Rimmer v. Austin, 191 Miss. 664, 4 So. 2d 224, 1941 Miss. LEXIS 179 (Miss. 1941).

Limitation in case of "trust" applicable to express and implied trusts. Hook v. Bank of Leland, 134 Miss. 185, 98 So. 594, 1924 Miss. LEXIS 253 (Miss. 1924).

Limitation in case involving trust applicable to action by ward's heir to cancel certificate of ward's stock to third party. Hook v. Bank of Leland, 134 Miss. 185, 98 So. 594, 1924 Miss. LEXIS 253 (Miss. 1924).

Ten-year statute applies to suits to enforce implied trusts. Robinson v. Strauther, 106 Miss. 754, 64 So. 724, 1914 Miss. LEXIS 17 (Miss. 1914).

Suit attacking foreclosure proceedings was barred where purchaser had taken the land under adverse claim of right thereto and had continuously claimed it for more than ten years, whether complaint should be viewed as a bill of review, as a suit in equity for land, or as a bill to enforce an implied trust. Alabama & V. R. Co. v. Thomas, 86 Miss. 27, 38 So. 770, 1905 Miss. LEXIS 81 (Miss. 1905).

A defendant who, having received money from a testator in his lifetime to invest for his benefit, invested it in lands for his own benefit holds it as constructive trustee for legatees to whom the right was bequeathed, and a suit to enforce the trust will not be barred until the limitation prescribed by this section [Code 1942, § 746] shall have expired. Patton v. Pinkston, 86 Miss. 651, 38 So. 500, 1905 Miss. LEXIS 53 (Miss. 1905).

5. Other cases of equitable cognizance.

Chancellor properly held that the statute of limitations, Miss. Code Ann. § 15-1-39 (Rev. 2012), barred the children's action regarding the legality of a modification to a trust agreement where the limitations period began to run when the modification was filed as a public record, and that modification was filed more than 10 years prior to the instant action. Domino v. Braswell, 165 So. 3d 530, 2015 Miss. App. LEXIS 266 (Miss. Ct. App. 2015).

This section [Code 1942, § 746] does not apply in a suit by a cotenant to remove as a cloud on title the claims of a cotenant who purchased at a tax sale. Smith v. Smith, 211 Miss. 481, 52 So. 2d 1, 1951 Miss. LEXIS 379 (Miss. 1951).

Action to cancel assignment of insurance policy, being one of exclusive equitable cognizance, must be brought within 10 years after action accrues. Garner v. Townes, 134 Miss. 791, 100 So. 20, 1924 Miss. LEXIS 328 (Miss. 1924).

RESEARCH REFERENCES

ALR.

When statute of limitations starts to run against enforcement of constructive trust. 55 A.L.R.2d 220.

CJS.

54 C.J.S., Limitations of Actions §§ 97, 98, 200 et seq.

Law Reviews.

1979 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 887, December 1979.

1989 Mississippi Supreme Court Review: Torts. 59 Miss. L. J. 939, Winter, 1989.

§ 15-1-41. Limitations applicable to actions arising from deficiencies in constructions, or improvements to real property.

No action may be brought to recover damages for injury to property, real or personal, or for an injury to the person, arising out of any deficiency in the design, planning, supervision or observation of construction, or construction of an improvement to real property, and no action may be brought for contribution or indemnity for damages sustained on account of such injury except by prior written agreement providing for such contribution or indemnity, against any person, firm or corporation performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property more than six (6) years after the written acceptance or actual occupancy or use, whichever occurs first, of such improvement by the owner thereof. This limitation shall apply to actions against persons, firms and corporations performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property for the State of Mississippi or any agency, department, institution or political subdivision thereof as well as for any private or nongovernmental entity.

This limitation shall not apply to any person, firm or corporation in actual possession and control as owner, tenant or otherwise of the improvement at the time the defective and unsafe condition of such improvement causes injury.

This limitation shall not apply to actions for wrongful death.

The provisions of this section shall only apply to causes of action accruing from and after January 1, 1986; and any cause of action accruing prior to January 1, 1986, shall be governed by Chapter 350, Laws of 1972.

HISTORY: Codes, 1942, § 720.5; Laws, 1966, ch. 397, § 1; Laws, 1972, ch. 350, §§ 1, 2; Laws, 1985, ch. 332; Laws, 1985, ch. 505, § 5; Laws, 1994, ch. 626, § 3, eff from and after July 1, 1994.

Editor's Notes — Laws of 1972, ch. 350 referred to in this section was former § 15-1-41, which provided for a limitation period of (10) ten years rather than the present (6) six years for the actions contemplated in the section. The last sentence of the first paragraph of present § 15-1-41 did not appear in the Chapter 350 version, and that chapter's last paragraph read "The provisions of this section shall apply to causes of action accruing prior to June 1, 1972, but shall not revive any cause of action barred under existing law as of that date."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.
3. Applicability.

1. In general.

Six-year limitation of Miss. Code Ann. § 15-1-41 is not affected by the date of accrual, and by extension not tolled by Miss. Code Ann. § 15-1-67; therefore, summary judgment was properly granted to a builder and a manufacturer in a property damage case arising from leaky roofs on chicken houses where a lawsuit was not filed until 2004, despite the fact that the leaks began shortly after completion in 1995 or 1996. Windham v. Latco of

Miss., Inc., 972 So. 2d 652, 2007 Miss. App. LEXIS 49 (Miss. Ct. App. 2007), rev'd, 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Concealment statute does not affect the statute of repose as the statute of repose operates independently of causes of action and by its nature bars hidden claims and accruals of causes of action are irrelevant to its operation. Estes v. Bradley, 954 So. 2d 455, 2006 Miss. App. LEXIS 912 (Miss. Ct. App. 2006), overruled in part, Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Installation of a new roof is clearly an "improvement to real property" under Miss. Code Ann. § 15-1-41; therefore, summary judgment was properly granted to defendant builders because the plaintiff owner's argument that a roof was a mere repair was without merit. Ferrell v. River City Roofing, Inc., 912 So. 2d 448, 2005 Miss. LEXIS 517 (Miss. 2005).

Homeowners' claim for flood damages allegedly caused by contractor's negligent construction and county's negligent inspection of their home were barred by Miss. Code Ann. §§ 15-1-41 and 14-1-49(1) because their action accrued when they first occupied the home and when they first asked the county to remedy the drainage problems. Baldwin v. Holliman, 913 So. 2d 400, 2005 Miss. App. LEXIS 297 (Miss. Ct. App. 2005), overruled in part, Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Purpose of statute of repose for actions to recover damages for injuries arising out of any deficiency in construction of improvement to real property is to provide repose protection to parties such as architects, contractors, and engineers who are engaged in construction business. McIntyre v. Farrel Corp., 680 So. 2d 858, 1996 Miss. LEXIS 518 (Miss. 1996).

The term "accruing" in § 15-1-41 means the date marking the action which begins the period of prescription. Rector v. Mississippi State Highway Comm'n, 623 So. 2d 975, 1993 Miss. LEXIS 311 (Miss. 1993).

The amended 6-year version of § 15-1-41 did not bar all actions based on injuries occurring after January 1, 1986, if acceptance of the work occurred prior to January 1, 1980, which would have eliminated the then existing exposure for work accepted between January 1, 1976 and December 31, 1979. Rector v. Mississippi State Highway Comm'n, 623 So. 2d 975, 1993 Miss. LEXIS 311 (Miss. 1993).

Contention that, even if § 15-1-41 supported summary judgment, it supported only partial summary judgment because section does not apply to all of party's claims, lacked merit, as express language of section states that "no action" may be brought more than 6 years after occupancy of building which houses defective product. Trust Co. Bank v. United States Gypsum Co., 950 F.2d 1144, 1992 U.S. App. LEXIS 569 (5th Cir. Miss. 1992).

Section 15-1-41 is much broader than most statutes of repose. Trust Co. Bank v. United States Gypsum Co., 950 F.2d 1144, 1992 U.S. App. LEXIS 569 (5th Cir. Miss. 1992).

Occupancy or acceptance of the building or improvement made thereon is required as the beginning point for the tolling of the statute of limitations set forth in § 15-1-41. McMichael v. Nu-Way Steel & Supply, Inc., 563 So. 2d 1371, 1990 Miss. LEXIS 268 (Miss. 1990).

Since § 15-1-41 does not define words "improvement to real property," they must be given their ordinary meaning, which is permanent addition that increases value of property and makes it more useful; suit by employee injured while attempting to climb down caged ladder was barred by 10-year statute of limitations, where ladder was integral part of building, providing means of moving from one level to another, was permanently affixed, and added value to refinery, and therefore was improvement to real property. Collins v. Trinity Industries, Inc., 861 F.2d 1364, 1988 U.S. App. LEXIS 17210 (5th Cir. Miss. 1988).

2. Constitutionality.

Section 15-1-41, which limits the time within which an action may be brought to recover damages for injuries arising from the design or construction of an "improvement to real property," does not violate the constitutional guarantee of equal protection, even though it does not apply to actions for wrongful death but applies to all other actions for damages caused by negligent construction. Phipps v. Irby Constr. Co., 636 So. 2d 353, 1993 Miss. LEXIS 418 (Miss. 1993).

It is not unconstitutional to allow wrongful death plaintiffs a better statute of limitations than that applied to personal injury plaintiffs under § 15-1-41. Fluor Corp. v. Cook, 551 So. 2d 897, 1989 Miss. LEXIS 463 (Miss. 1989).

Section 15-1-41 does not violate the equal protection clause of the Fourteenth Amendment on the basis that it limits actions against architects and contractors but excludes similarly situated persons such as owners and suppliers. Reich v. Jesco, Inc., 526 So. 2d 550, 1988 Miss. LEXIS 307 (Miss. 1988).

The ten-year limitation contained in § 15-1-41 does not violate either Article 3, § 24 or Article 4, § 87 of the Mississippi Constitution. Anderson v. Fred Wagner & Roy Anderson, Jr., Inc., 402 So. 2d 320, 1981 Miss. LEXIS 2052 (Miss. 1981).

3. Applicability.

In a suit brought by appellants against appellees for damages to appellants' property based on fraudulent concealment of a gully on the property, which began forming sinkholes as a result of the fill material beginning to decay and causing damage to the property, fraudulent concealment was not properly pled and the statute of repose was not tolled because appellees' act of filling the gully with the material which had been previously taken out of the land was done at the request of the original property owners; there was no subsequent act made in an effort by appellees to conceal any purported wrongdoing; and there was no evidence showing that appellees attempted to mask their actions or prevent discovery of their actions. Aydin v. Daniels, 179 So. 3d 1171, 2015 Miss. App. LEXIS 296 (Miss. Ct. App.), cert. denied, 179 So. 3d 1137, 2015 Miss. LEXIS 622 (Miss. 2015).

In a suit brought by appellants against appellees for damages to appellants' property based on fraudulent concealment of a gully on the property, which began forming sinkholes as a result of the fill material beginning to decay and causing damage to the property, fraudulent concealment was not properly pled and the statute of repose was not tolled because appellees' act of filling the gully with the material which had been previously taken out of the land was done at the request of the original property owners; there was no subsequent act made in an effort by appellees to conceal any purported wrongdoing; and there was no evidence showing that appellees attempted to mask their actions or prevent discovery of their actions. Aydin v. Daniels, 179 So. 3d 1171, 2015 Miss. App. LEXIS 296 (Miss. Ct. App.), cert. denied, 179 So. 3d 1137, 2015 Miss. LEXIS 622 (Miss. 2015).

Claim by homeowners against a builder under the New Home Warranty Act (NHWA), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHWA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. Townes v. Rusty Ellis Builder, Inc., 98 So. 3d 1046, 2012 Miss. LEXIS 483 (Miss. 2012).

When homeowners and a builder entered into an agreement purportedly tolling limitations periods applicable to the homeowners' claims against the builder for structural defects in the homeowners' home, the homeowners' common-law claims were time-barred because (1) the claims fell under Miss. Code Ann. § 15-1-41's statute of repose, and (2) Miss. Code Ann. § 15-1-5 barred contracts to change a limitations period. Townes v. Rusty Ellis Builder, Inc., 98 So. 3d 1046, 2012 Miss. LEXIS 483 (Miss. 2012).

Based on a review of the language of the statute, as well as the direction given by the state supreme court, the statute of repose did not commence until the builder was no longer in possession of the house. The builder sold the home to the homeowners on February 17, 1997, within six years of the filing of the complaint on February 12, 2003; therefore, the homeowners' claims were not barred by the six-year statute of repose found in Miss. Code Ann. § 15-1-41. J. Criss Builder, Inc. v. White, 35 So. 3d 541, 2009 Miss. App. LEXIS 698 (Miss. Ct. App. 2009), cert. denied, 34 So. 3d 1176, 2010 Miss. LEXIS 266 (Miss. 2010).

In the homeowners' suit for water damage, the Supreme Court of Mississippi held that a windows manufacturer was not covered by the six-year statute of repose set forth at Miss. Code Ann. § 15-1-41 as an entity which designed or planned the construction of an improvement to real property. The evidence did not show that the windows manufacturer either supplied windows designed specifically for the homeowners' home or furnished specific instructions for the installation of the windows into the homeowners' home. Winkel v. Windsor Windows & Doors, 983 So. 2d 1055, 2008 Miss. LEXIS 304 (Miss. 2008).

Trial court erred in granting summary judgment to a manufacturer of poultry houses and a general contractor, in a suit brought by farmers, because, under either an equitable-estoppel theory or the fraudulent-concealment exception of Miss. Code Ann. § 15-1-67, the application of Miss. Code Ann. § 15-1-41 could be barred. Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Miss. Code Ann. § 15-1-41 is not barred if fraudulent concealment is known, or with due diligence could have been discovered, within a six-year repose period. This holding balances the denial of repose protection to architects, contractors, and engineers who engage in fraudulent concealment, while requiring plaintiffs to exercise due diligence in pursuing their causes of action. Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Trial court erred in dismissing the homeowners' claims that the original owners knew of the alleged defects in a home at the time they sold it to the subsequent owners based on the statute of repose as the claim was for misrepresentation as to the home's condition, not for any defective design, and thus the statute of repose did not apply. Estes v. Bradley, 954 So. 2d 455, 2006 Miss. App. LEXIS 912 (Miss. Ct. App. 2006), overruled in part, Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Summary judgment was properly granted to defendant builders in a case involving a dispute over a roof because the action was untimely under Miss. Code Ann. § 15-1-41; § 15-1-41 applied to suits by owners against builders. Ferrell v. River City Roofing, Inc., 912 So. 2d 448, 2005 Miss. LEXIS 517 (Miss. 2005).

Engineer was entitled to dismissal of landowners' claims for damages allegedly sustained as a result of the engineer's negligence in designing a bridge and a road more than six years earlier because these claims were subject to and barred by the statute of repose set forth in Miss. Code Ann. § 15-1-41. Scheinblum v. Lauderdale County Bd. of Supervisors, 350 F. Supp. 2d 743, 2004 U.S. Dist. LEXIS 26321 (S.D. Miss. 2004).

County board of supervisors and engineers were not entitled to dismissal of landowners' claims for damages allegedly sustained as a result of the board's and engineers' negligence more than six years earlier in reviewing and approving the subdivision map for a subdivision that flooded, on the ground that the claims were barred by the statute of repose set forth in Miss. Code Ann. § 15-1-41, because a subdivision map did not constitute an improvement to real property and, thus, these functions were not covered by the statute of repose. Scheinblum v. Lauderdale County Bd. of Supervisors, 350 F. Supp. 2d 743, 2004 U.S. Dist. LEXIS 26321 (S.D. Miss. 2004).

The statute governs a situation in which a surety takes over a construction contract, and the owner sues the surety/contractor for damages arising from construction deficiencies. Cooper Indus. v. Tarmac Roofing Sys., 276 F.3d 704, 2002 U.S. App. LEXIS 173 (5th Cir. Miss. 2002).

Miss. Code Ann. § 15-1-49, rather than this section, applied to an action by a subcontractor against a sub-subcontractor for the latter's failure to use American made parts as required by the general contract as the subcontractor sought contract damages for an alleged breach, rather than damages arising out of an injury to person or property. Air Comfort Sys., Inc. v. Honeywell, Inc., 760 So. 2d 43, 2000 Miss. App. LEXIS 235 (Miss. Ct. App. 2000).

Motorist struck by passenger train could not maintain negligence claim based on elevated nature of crossing, as crossing had been in existence for at least 29 years such that statute of repose barred any claim based on negligent design, and even if motorist could not see oncoming vehicular traffic, road had ample room for passing cars to cross tracks simultaneously such that elevated crossing did nothing to prevent motorist from seeing oncoming train. Woods v. Amtrak, 982 F. Supp. 409, 1997 U.S. Dist. LEXIS 16745 (N.D. Miss. 1997).

Large piece of industrial machinery may constitute "improvement to real property" within meaning of statute of repose for actions to recover damages for injuries arising out of any deficiency in construction of improvement to real property. McIntyre v. Farrel Corp., 680 So. 2d 858, 1996 Miss. LEXIS 518 (Miss. 1996).

Original equipment manufacturer is not entity that performs or furnishes design, planning, supervision of construction, or construction of improvement to real property within meaning of statute of repose for actions to recover damages for injuries arising out of any deficiency in construction of improvement to real property. McIntyre v. Farrel Corp., 680 So. 2d 858, 1996 Miss. LEXIS 518 (Miss. 1996).

For purposes of Mississippi statute of repose related to actions involving improvements to real property, original manufacturer of "calendar" used in tire making process was not entity that performed or furnished "design, planning, supervision of construction, or construction" of improvement to real property, and thus was not entitled to benefit of statute. McIntyre v. Farrell Corp., 97 F.3d 779, 1996 U.S. App. LEXIS 26533 (5th Cir. Miss. 1996).

The supplier of a tile floor on which the plaintiff slipped and fell was not necessarily protected from liability under § 15-1-41 unless it provided the "design, planning, supervision of construction or construction" of the floor, since the plain language of § 15-1-41 does not indicate an intent to protect all those who supplied an "improvement to real property." Wolfe v. Dal-Tile Corp., 876 F. Supp. 116, 1995 U.S. Dist. LEXIS 7375 (S.D. Miss. 1995).

In an action for injuries to a plaintiff employee allegedly caused by the defendant's negligent design and construction of a walkway at a paper mill sold by the defendant to the plaintiff's employer, the 10-year statute of repose of former § 15-1-41 applied, rather than the 6-year limitation of the 1985 amendment to § 15-1-41, since the cause of action "accrued" when the employer accepted the mill from the defendant in 1984, not in 1992 when the plaintiff's injury occurred. Stephens v. St. Regis Pulp & Paper Co., 863 F. Supp. 341, 1994 U.S. Dist. LEXIS 19294 (S.D. Miss. 1994).

By express language, § 15-1-41 extends repose protection to any person furnishing design, planning, supervision of construction or construction of improvement to real property, including manufacturers who furnish design for improvements to real property; thus it protects company in instant case which designed and manufactured fire-proofing materials which contained asbestos, which materials were included in building owned by plaintiff, where plaintiff brought action to recover cost of asbestos abatement program. Trust Co. Bank v. United States Gypsum Co., 950 F.2d 1144, 1992 U.S. App. LEXIS 569 (5th Cir. Miss. 1992).

Fire-proofing materials, designed and manufactured by defendant, which contained asbestos, and which were incorporated and used in building constructed for plaintiff, constitute improvement to real property within customary meaning of such term; common definitions of term generally refer to permanent addition which increases value of property and makes it more useful, and there is little doubt that fire-proofing materials increased value of bank building and made it more useful. Trust Co. Bank v. United States Gypsum Co., 950 F.2d 1144, 1992 U.S. App. LEXIS 569 (5th Cir. Miss. 1992).

The 10-year statute of limitations for construction deficiencies set forth in § 15-1-41 applied to an action brought by the owner of a chicken house against the designer and contractor arising from the collapse of the chicken house approximately 12 years after it was built even though the owner had no reason to believe that anything was wrong with the chicken house until the time of the collapse. Reich v. Jesco, Inc., 526 So. 2d 550, 1988 Miss. LEXIS 307 (Miss. 1988).

Heat exchanger unit fell within statutory language of "improvement to real property," as part of petroleum refinery; although factual considerations may be involved in determining whether article of property is improvement to real property, such considerations did not constitute genuine issue of material fact to preclude summary judgment in this case. Smith v. Fluor Corp., 514 So. 2d 1227, 1987 Miss. LEXIS 2867 (Miss. 1987).

The ten-year limitation period of § 15-1-41 does not apply to a builder/owner of premises in which a defective or unsafe condition is subsequently found, since the builder who is also the owner necessarily has equal access to control over the defective condition. West End Corp. v. Royals, 450 So. 2d 420, 1984 Miss. LEXIS 1697 (Miss. 1984).

A home builder's potential exposure to a suit for negligence or breach of implied warranty in the construction of a home continues for 10 years under § 15-1-41, since the removal of the requirement of privity between builder and purchaser to maintain a viable cause of action prevents that statute of limitations from being gratuitously shortened in the case of a first purchaser selling the home to a third party. Keyes v. Guy Bailey Homes, Inc., 439 So. 2d 670, 1983 Miss. LEXIS 2744 (Miss. 1983).

The ten year limitation provision of Miss Code § 15-1-41 was applicable to a building owner's action against an architect, a roofing subcontractor, roof deck subcontractors, and a general contractor for alleged negligence in the design and construction of the roof on plaintiff's building. Deville Furniture Co. v. Jesco, Inc., 697 F.2d 609, 1983 U.S. App. LEXIS 30714 (5th Cir. Miss. 1983).

The ten-year limitation provision of Miss Code § 15-1-41 was applicable to a building owner's action against a general contractor, an architect, a roofing subcontractor and roof deck subcontractors alleging defendants negligently designed and constructed and used and supplied improper materials in the construction of a roof on plaintiff's commercial premises. De Ville Furniture Co. v. Jesco, Inc., 423 So. 2d 1337, 1982 Miss. LEXIS 2400 (Miss. 1982).

RESEARCH REFERENCES

ALR.

What statute of limitation covers action for indemnity. 57 A.L.R.3d 833.

When statute of limitations commences to run against claim for contribution or indemnity based on tort. 57 A.L.R.3d 867.

What statute of limitations applies to action for contribution against joint tortfeasor. 57 A.L.R.3d 927.

Liability of wharf owner or operator for personal injuries to invitees or licensees resulting from condition of premises or operation of equipment. 34 A.L.R.4th 572.

Time of discovery as affecting running of statute of limitations in wrongful death action. 49 A.L.R.4th 972.

Fraudulent concealment of cause of action for wrongful death as affecting period of limitations. 88 A.L.R.4th 851.

Modern status of the application of "discovery rule" to postpone running of limitations against actions relating to breach of building and construction contracts. 33 A.L.R.5th 1.

What constitutes "improvement to real property" for purposes of statute of repose or statute of limitations. 122 A.L.R.5th 1.

Am. Jur.

4 Am. Jur. Trials, Statutes of Limitation § 20.

Law Reviews.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss. L.J. 49, March, 1985.

§ 15-1-43. Limitations applicable to actions founded on domestic judgments or decrees; renewal of judgment or decree; notice of renewal.

All actions founded on any judgment or decree rendered by any court of record in this state, shall be brought within seven (7) years next after the rendition of such judgment or decree, or last renewal of judgment or decree, whichever is later.

A judgment or decree can be renewed only if, at the time of renewal, the existing judgment or decree has not expired. A judgment or decree may be renewed by the filing with the clerk of the court that rendered such judgment or decree a Notice of Renewal of Judgment or Decree substantially in the following form:

NOTICE OF RENEWAL OF JUDGMENT OR DECREE

(a) Notice is given of renewal of judgment that was rendered and filed in this action as follows:

(i) Date that judgment was filed;

(ii) Case number of such judgment;

(iii) Judgment was taken against;

(iv) Judgment was taken in favor of;

(v) Current holder of such judgment;

(vi) Current amount owing of such judgment; and

(vii) Certification that at the time of the filing of the notice the judgment remains valid and has not been satisfied or barred.

(b) If applicable, that a Notice of Renewal of Judgment or Decree has been previously filed with the clerk of the court that rendered such judgment on:

The renewal of such judgment is effective as of the date of the filing of the Notice of Renewal with the clerk of the court that rendered such judgment. The renewal of judgment shall be treated in the same manner as the previously rendered judgment. The circuit clerk shall enroll the Notice of Renewal showing the date of the filing of the Notice of Renewal, and the lien of the renewal of such judgment continues from the date of the enrollment of the existing judgment. The right to renew a judgment in any other manner allowed by law instead of using the above Notice of Renewal remains unimpaired.

At the time of the filing of the Notice of Renewal of Judgment, the judgment creditor or his attorney shall make and file with the clerk of the court that rendered the judgment an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor. Promptly upon the filing of the Notice of Renewal of Judgment, the clerk shall mail notice of the filing of the Notice of Renewal of Judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the Notice of Renewal of Judgment to the judgment debtor and may file proof of mailing with the clerk.

Lack of mailing notice of filing by the clerk shall not affect the validity of the renewal of judgment if proof of mailing by the judgment creditor has been filed.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (13); 1857, ch. 57, art. 8; 1871, § 2153; 1880, § 2674; 1892, § 2743; 1906, § 3103; Hemingway's 1917, § 2467; 1930, § 2303; 1942, § 733; Laws, 2010, ch. 352, § 1; Laws, 2011, ch. 539, § 1, eff from and after July 1, 2011.

Cross References — Enrollment of judgments in civil cases, see §§ 11-7-189.
Collateral attack on decree in chancery, see § 91-1-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Issuance of execution.
4. Garnishment.
5. Computation of limitation period.
6. Extension of judgment lien.
7. Laches.

1. In general.

Chancellor did not err in finding that a former wife's claim to a prior monetary judgment against a former husband was not yet barred by the statute of limitations because at the time the wife filed her motion for citation for contempt and for modification of alimony, the statute of limitations had not yet expired on her ability to collect the prior judgment; the wife filed her motion within the applicable seven-year statute-of-limitations period and based it on the prior underlying judgment. Smith v. Smith, 203 So. 3d 1150, 2016 Miss. App. LEXIS 737 (Miss. Ct. App. 2016).

Chancery court was within its discretion to order a full accounting and the statute of limitations did not apply when it appeared that the conservator's records for the conservatorship were incomplete; a full accounting was necessary where the chancery court could not merely take the conservator at her word that the money was used for the ward's benefit and ordered the conservator to show proof that the checks and other items were actually used for her ward; the conservator was unable to do so. Russell v. Allen (In re Allen), 962 So. 2d 737, 2007 Miss. App. LEXIS 519 (Miss. Ct. App. 2007).

Trial court's 1994 order of dismissal without prejudice was not a judgment or decree and not subject to the seven-year statute of limitations under Miss. Code Ann. § 15-1-43; instead subcontractor's claims were subject to the three-year statute of limitations under Miss. Code Ann. § 15-1-49, and were thus time-barred because they were not filed within three years after the date of the order of dismissal. Haycraft v. Mid-State Constr. Co., 915 So. 2d 1117, 2005 Miss. App. LEXIS 1000 (Miss. Ct. App. 2005).

The parties' 1981 settlement agreement required the ex-husband to give to the ex-wife one-half of all future stock dividends and bonuses. The chancery court applied Miss. Code Ann. § 15-1-43 (Rev. 1995) to limit the ex-wife's recovery to only dividends, and other benefits to the seven years prior to the commencement of the contempt action. Nicholas v. Nicholas, 841 So. 2d 1208, 2003 Miss. App. LEXIS 287 (Miss. Ct. App. 2003).

In a child support matter, more than seven years had passed since the eldest child had become 21; therefore, his claim was barred by the statute of limitations, but the claim of his sister was still viable, and the father did not waive the defense by failing to raise it as an affirmative defense in the pleadings when no pleading was required and the defense of laches was inapplicable to the youngest child's claims. Brown v. Brown, 822 So. 2d 1119, 2002 Miss. App. LEXIS 403 (Miss. Ct. App. 2002).

The seven year statute of limitations contained in the statute does not apply to child support payments. Glass v. Glass, 726 So. 2d 1281, 1998 Miss. App. LEXIS 1109 (Miss. Ct. App. 1998).

Statute of limitations, applicable to contempt action brought by divorced parent to enforce past due child support, is savings clause in favor of persons under disabilities (§ 15-1-59), not 7 year statute of limitations (§ 15-1-43), so long as child is minor. Wilson v. Wilson, 464 So. 2d 496, 1985 Miss. LEXIS 1914 (Miss. 1985).

In an action by a debtor against a bank to cancel the principal and interest in a promissory note and a deed of trust securing the note, the trial court properly considered a defunct judgment which had been obtained by the bank against the debtor and her husband in determining the debtor's liability to the bank where the defunct judgment was a sufficient basis to form the consideration for a component part of a new obligation entered into by the debtor; however, the trial court erred in computing the amount of consideration to include interest on the principal of the judgment debt beyond the seven years after the rendition of the judgment as provided in § 15-1-43. Under the provisions of § 75-17-7 interest should have been charged at the rate of eight percent per year for seven years to determine the amount of the former legal obligation where the note leading to the earlier judgment had provided for interest of eight percent per year. Keller v. Citizens Bank, Columbia, Miss., 399 So. 2d 1332, 1981 Miss. LEXIS 2008 (Miss. 1981).

This statute [Code 1942, § 733] operates to limit the time to sue for past-due installments of alimony. Rubisoff v. Rubisoff, 242 Miss. 225, 133 So. 2d 534, 1961 Miss. LEXIS 548 (Miss. 1961).

Judgment lien of United States obtained in proceeding in Federal district court is subject, under applicable Federal statutes, to state statutes (§§ 733, 735, 1554, 1555, Code of 1942) governing the enrollment of judgments and limiting the duration of the lien thereof to seven years, notwithstanding provision of § 104, Constitution of 1890, that statutes of limitation in civil cases shall not run against the state, or any subdivision or municipal corporation thereof. United States v. Williams-Richardson Co., 206 Miss. 378, 40 So. 2d 177, 1949 Miss. LEXIS 268 (Miss. 1949).

Where an administrator failed to plead the bar to a scire facias against him, and it is sought to subject lands to the judgment, the heir may defend on the statute. Champion v. Cayce, 54 Miss. 695, 1877 Miss. LEXIS 83 (Miss. 1877).

Where the plaintiff in the judgment, were he living, could not revive the same or have execution on it, the administrator cannot do so. Palmer v. Jones, 50 Miss. 657, 1874 Miss. LEXIS 105 (Miss. 1874).

When the statute is once put in motion, it is not arrested by any subsequent disability; nothing but a positive statute will stop it. Pollard v. Eckford, 50 Miss. 631, 1874 Miss. LEXIS 102 (Miss. 1874).

2. Applicability.

Employee's claim to enforce a workers' compensation judgment against a corporate employer's president was not time-barred because the suit against the president was filed less than seven years after an administrative judge awarded the employee compensation. Jarrett v. Dillard, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

Contempt action was timely because the statute of limitations in Miss. Code Ann. § 15-1-43 applied as a spouse's action sought enforcement of a hold-harmless provision of a property-settlement agreement, which by operation of Miss. Code Ann. § 93-5-2 became part of the final judgment of divorce, and the spouse filed for contempt within seven years of learning that a bank was pursuing the spouse for the debt on a car which was assigned to the other spouse and discharged in bankruptcy by the other spouse. Moseley v. Smith, 180 So. 3d 667, 2014 Miss. App. LEXIS 689 (Miss. Ct. App. 2014), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 605 (Miss. 2015), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 625 (Miss. 2015).

After a guardianship account was drained, the twenty-four-year-old ward sued the bank for breaching its duty by allowing the funds on deposit to be converted without a court order; the claim was barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49, because it was not filed three years after he turned twenty-one. The chancery court's decree did not give the ward any affirmative relief that would make him a judgment creditor; therefore, Miss. Code Ann. § 15-1-43 was not the applicable statute of limitations. Williams v. Duckett (In re Duckett), 991 So. 2d 1165, 2008 Miss. LEXIS 307 (Miss. 2008).

3. Issuance of execution.

Execution could issue within seven years after dissolution of decree obtained by judgment debtor enjoining execution on money decree, though original decree was barred. Russ v. Stockstill, 155 Miss. 368, 124 So. 359, 1929 Miss. LEXIS 290 (Miss. 1929).

The issuance of execution within seven years after the rendition of a judgment, and within the same period prior to the institution of a suit thereon, will not save the bar, since the limitation runs from its rendition. Berkson v. Cox, 73 Miss. 339, 18 So. 934, 1895 Miss. LEXIS 120 (Miss. 1895); Stith v. Parham, 57 Miss. 289, 1879 Miss. LEXIS 72 (Miss. 1879).

4. Garnishment.

Where a party commences a garnishment proceeding when the underlying judgment is still valid, the statute of limitations for actions on judgments is tolled as to that particular party as to funds, due to the judgment debtor, that were in the hands of the garnishee when the garnishment proceeding was initiated and the underlying judgment was valid; a garnisher is not entitled to the funds due to the judgment debtor, which came into the garnishee's hands only after the underlying judgment lapsed. Quality Diesel Serv. v. Tiger Drilling Co., LLC, 190 So. 3d 860, 2016 Miss. LEXIS 2 (Miss. 2016).

Trial court erred in granting a limited liability company's (LLC) motion to dismiss a garnishment proceeding because a judgment creditor was not required to renew its underlying judgment against the judgment debtor for it to maintain its timely filed garnishment proceeding against the LLC, who was indebted to the debtor; the creditor brought its action within the seven-year period, and the underlying judgment had not lapsed as to its timely issued writs of garnishment and garnishment contest. Quality Diesel Serv. v. Tiger Drilling Co., LLC, 190 So. 3d 860, 2016 Miss. LEXIS 2 (Miss. 2016).

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run, and the purchaser failed to take advantage of the many procedural mechanisms available to him to extend the life of his judgment; thus, the judgment had been extinguished, and the purchaser could not bring a valid garnishment action. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

Seller was not estopped from asserting the statute of limitations defense because it never prevailed on the argument that the judgment entered in favor of the purchaser was uneforceable; therefore, if the seller was taking an inconsistent position, the doctrine of estoppel would not apply. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run; the purchaser's motion to amend the mandate in the action the seller filed against him did not toll the statute. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

Because a purchaser's circuit court judgment was not the underlying proceeding, it was not stayed by the order granting interlocutory appeal. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

A garnishee which failed to file an answer to a writ of garnishment as required by § 11-35-25 and instead paid $10 per week of the judgment debtor's salary directly to the attorney for the judgment holder was liable to the debtor for monies wrongfully withheld after expiration of the judgment where, although the judgment and execution thereon had expired after seven years as provided in §§ 15-1-3, 15-1-43 and although the judgment holder had failed to file another suit on the judgment prior to the expiration of the seven years as required by § 15-1-47 to extend the judgment lien, the garnishee continued to pay the $10 per week to the judgment holder for two years after the judgment had lapsed. Anderson-Tully Co. v. Brown, 383 So. 2d 1389, 1980 Miss. LEXIS 2023 (Miss. 1980).

Writ of garnishment could not be issued on old judgment after seven years, though suit on judgment was commenced before seven years expired, since execution and other process to enforce the lien must be issued on the new judgment. Buckley v. F. L. Riley Mercantile Co., 155 Miss. 150, 124 So. 267, 1929 Miss. LEXIS 268 (Miss. 1929).

Garnishment will not extend the lien of the judgment upon which it is founded. Grace v. Pierce, 127 Miss. 831, 90 So. 590, 1921 Miss. LEXIS 286 (Miss. 1921).

5. Computation of limitation period.

Chancery court did not err in granting a wife an interest in a husband's retirement account to secure child support; thus, the statute of limitations on the wife's action based on a domestic judgment under Miss. Code Ann. § 15-1-43 was tolled by the child support exception of Miss. Code Ann. § 15-1-59 because the retirement funds, though put in the wife's name, were child support payments. Carlson v. Matthews, 966 So. 2d 1258, 2007 Miss. App. LEXIS 725 (Miss. Ct. App. 2007).

Limitations period under Miss. Code Ann. § 15-1-43 did not bar a contempt action to recover child support payments 12 years after a divorce decree was entered because the youngest child had until 2008 to bring the action under the savings clause of Miss. Code Ann. § 15-1-59. Strack v. Sticklin, 959 So. 2d 1, 2006 Miss. App. LEXIS 634 (Miss. Ct. App. 2006), cert. denied, 958 So. 2d 1232, 2007 Miss. LEXIS 371 (Miss. 2007).

Trial court chancellor properly found a petition for contempt was not barred by any statute of limitation because it was not the assertion of a new claim but rather part of an ongoing effort to collect on a six-year-old child support judgment against the father; collecting past due child support and expenses fell within the seven-year period of limitation for enforcement of domestic judgments, Miss. Code Ann. § 15-1-43 (Rev. 1995). Morrison v. Miss. Dep't of Human Servs., 852 So. 2d 578, 2002 Miss. App. LEXIS 616 (Miss. Ct. App. 2002), rev'd, in part, aff'd, 863 So. 2d 948, 2004 Miss. LEXIS 16 (Miss. 2004).

Statute of limitations applicable to action founded on judgment or decree (§ 15-1-43) is tolled when suit to renew decree is filed, but commences to run again when suit to renew is dismissed as stale under § 11-53-25; dismissal of stale case is not dismissal for matter of form to which statute of limitations applicable to commencement of new action subsequent to abatement or defeat of original action (§ 15-1-69) would apply. Deposit Guaranty Nat'l Bank v. Roberts, 483 So. 2d 348, 1986 Miss. LEXIS 2396 (Miss. 1986).

Where the claimant commenced his suit in circuit court within twelve months after the money became due and payable to enforce a mechanic's and a materialman's lien and recovered a judgment establishing the lien, and then started a second suit after twelve months had expired for the purpose of having judgment declared prior to lien claimed under a deed of trust, the circuit court judgment on which relief was sought in the chancery court on the second suit, was not barred by the limitation until seven years after its rendition. Vinson v. Cooley, 54 So. 2d 750 (Miss. 1951).

Under § 2543, Code of 1942, which provides that whenever an offender has violated the condition of a suspended sentence the court is authorized to annul such suspended sentence and the offender shall be subject to arrest and court sentence service, as if no suspended sentence has been granted and for the full term of the original sentence that had not been served, the court may enforce the judgment and revoke the suspension of execution at any subsequent time, even after the original period of the sentence has passed. Smith v. State, 212 Miss. 497, 54 So. 2d 739, 1951 Miss. LEXIS 475 (Miss. 1951).

Wife is entitled to recover from her husband's estate defaulted alimony payments and interest extending for a period seven years prior to husband's death, but this section [Code 1942, § 733] bars recovery for alimony in default for more than seven years before husband's death. Schaffer v. Schaffer, 209 Miss. 220, 46 So.

2d 443, 1950 Miss. LEXIS 381 (Miss. 1950).

Where a decree of foreclosure was rendered in 1931 and provided for report of sale in the next term of court in 1932, but the sale was not effected nor was a decree rendered confirming it and providing for deficiency judgment until 1933, the limitation provided for by this section [Code 1942, § 733] did not start to run until the rendition of the second decree as regards an action commenced to collect on the deficiency judgment. Roebke v. Love, 186 Miss. 609, 191 So. 122, 1939 Miss. LEXIS 238 (Miss. 1939).

Time, limited for issuance, is not extended by execution during defendant's absence from state; issuance not being commencement of action. McGraw v. Mitchell, 142 Miss. 357, 107 So. 423, 1926 Miss. LEXIS 82 (Miss. 1926).

Fractions of days not considered in computing limitation period. Hattiesburg Grocery Co. v. Tompkins, 111 Miss. 592, 71 So. 866, 1916 Miss. LEXIS 343 (Miss. 1916).

Suit begun October 31, 1914, on judgment rendered October 31, 1907, not barred. Hattiesburg Grocery Co. v. Tompkins, 111 Miss. 592, 71 So. 866, 1916 Miss. LEXIS 343 (Miss. 1916).

6. Extension of judgment lien.

Since the judgment creditor did not challenge the trial court's jurisidiction to enter a default judgment against him in 1992 or contest the allegation, regarding the 1999 renewal, that he was a resident of Hinds County, the assignee was entitled to file his 1999 action for renewal of the judgment in the trial court in Hinds County, even though the original judgment was entered in the Chancery Court of Copiah County in 1985, as venue was permissible pursuant to Miss. Code Ann. § 15-1-43 in the court where the judgment was originally rendered or wherever else venue was proper, including the place where the judgment debtor was residing. Lloyd v. Bank of the South, 796 So. 2d 985, 2001 Miss. LEXIS 184 (Miss. 2001).

Since Miss. Code Ann. § 15-1-43 does not specify where a renewal of judgment suit may be brought, such judgments may be sought by motion in the court where the judgment was originally rendered, or by a separate action wherever venue is proper, including the place where the defendant is residing. Lloyd v. Bank of the South, 796 So. 2d 985, 2001 Miss. LEXIS 184 (Miss. 2001).

The only effective method to extend the judgment lien is by filing another suit upon the judgment before the expiration of 7 years from the rendition thereof. Kimbrough v. Wright, 231 Miss. 855, 97 So. 2d 362, 1957 Miss. LEXIS 573 (Miss. 1957).

Plaintiff's action in bringing suits and obtaining process before the lapse of seven years from the date of the rendition of previous successive judgments effectively stopped the running of a statute of limitations. Kimbrough v. Wright, 231 Miss. 855, 97 So. 2d 362, 1957 Miss. LEXIS 573 (Miss. 1957).

The lien of a judgment can be extended only by the filing of another suit thereon within seven years. A suit in the name of the assignee of a judgment within the prescribed time is a full compliance with the section [Code 1942, § 733]. Street v. Smith, 85 Miss. 359, 37 So. 837, 1904 Miss. LEXIS 159 (Miss. 1904).

If a new lien be sought, a suit must be brought on the judgment within seven years. Stith v. Parham, 57 Miss. 289, 1879 Miss. LEXIS 72 (Miss. 1879); Buckner v. Pipes, 56 Miss. 366, 1879 Miss. LEXIS 130 (Miss. 1879); Locke v. Brady, 30 Miss. 21, 1855 Miss. LEXIS 54 (Miss. 1855).

7. Laches.

Trial court did not err in applying the statute of limitations at Miss. Code Ann. § 15-1-43 to bar a mother's claim for child support arrearages as to her three oldest adult children where she failed to support the proposition that her complaint could relate back to a voided prior action and failed to cite any authority supporting the proposition that the statute of limitations did not begin to run until the youngest child was emancipated. Ladner v. Logan, 857 So. 2d 764, 2003 Miss. LEXIS 551 (Miss. 2003).

Chancery court found that the seven-year statute of limitation, Miss. Code Ann. § 15-1-43, on enforcing monetary judgments barred recovery of any unpaid alimony amount that accrued seven years prior to the commencement of the contempt action. The ex-husband took no issue with that limitation, but his argument that laches and/or equitable estoppel should have precluded his ex-wife from enforcing any of the 1981 settlement agreement's financial provisions was rejected, since laches was inapplicable to those claims not barred by limitations, and the ex-husband had unclean hands so that equitable estoppel was not a defense. Nicholas v. Nicholas, 841 So. 2d 1208, 2003 Miss. App. LEXIS 287 (Miss. Ct. App. 2003).

Wife not demanding alimony within seven-year statutory period held guilty of laches, barring recovery of installments due more than seven years. Hollis v. Bryan, 166 Miss. 874, 143 So. 687, 1932 Miss. LEXIS 304 (Miss. 1932).

RESEARCH REFERENCES

ALR.

Inclusion or exclusion of first and last day for purposes of statute of limitations. 20 A.L.R.2d 1249.

Am. Jur.

46 Am. Jur. 2d, Judgments § 644.

CJS.

50 C.J.S., Judgments §§ 919-924 et seq.

Law Reviews.

Hoffheimer, Mississippi Conflict of Laws. 67 Miss. L. J. 175, Fall, 1997.

§ 15-1-45. Limitations applicable to actions founded on foreign judgments or decrees.

All actions founded on any judgment or decree rendered by any court of record without this state shall be brought within seven years after the rendition of such judgment or decree, and not after. However, if the person against whom such judgment or decree was or shall be rendered, was, or shall be at the time of the institution of the action, a resident of this state, such action, founded on such judgment or decree, shall be commenced within three years next after the rendition thereof, and not after.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (14); 1857, ch. 57, art. 9; 1871, § 2154; 1880, § 2675; 1892, § 2744; 1906, § 3104; Hemingway's 1917, § 2468; 1930, § 2304; 1942, § 734.

Cross References — Uniform enforcement of foreign judgments, see § 11-7-301 et seq.

Effect on action barred in another state, see § 15-1-65.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Limitation period as to residents.

1. In general.

Circuit court erred in denying a former wife's motion to set aside a foreign judgment ordering her to pay a former husband because the statute of limitations had lapsed; the judgment was intended to be a continuation of the divorce proceeding and, therefore, was not enrolled before the statute of limitations lapsed. White v. Taylor, — So. 3d —, 2019 Miss. App. LEXIS 261 (Miss. Ct. App. June 11, 2019).

Registration of a child support order was timely because the three-year statute of limitations applicable to the father under Mississippi law was tolled while the child remained a minor. The tolling applied to the mother and the State, though neither was under such a disability, and the child was twelve years old in January, 1999. Shelnut v. Dep't of Human Servs., 9 So. 3d 359, 2009 Miss. LEXIS 125 (Miss. 2009).

Garnishment proceeding was no longer valid after the lapse of the judgment upon which the garnishment was issued; because more than three years had passed, the statute of limitation in Miss. Code Ann. § 15-1-45 expired before the judgment creditor received its writ of garnishment, such that the garnishment was void ab initio and was unenforceable because it was not timely filed. Nat'l Enters. v. Valsamakis, 879 So. 2d 523, 2004 Miss. App. LEXIS 716 (Miss. Ct. App. 2004).

The statute did not apply to an action by a judgment creditor in which the allegation was that the judgment debtor had fraudulently conveyed real property to his son since the issue was not whether the judgment creditor timely and properly filed its foreign judgment in a Mississippi court, but whether the judgment creditor timely filed its complaint against the judgment debtor and his son for a fraudulent conveyance. O'Neal Steel, Inc. v. Millette, 797 So. 2d 869, 2001 Miss. LEXIS 31 (Miss. 2001).

Statute of limitations on mother's action to enforce foreign judgment against father for child support arrearage was tolled by minority of children, even though mother was not under disability of minority. Vice v. Department of Human Servs., 702 So. 2d 397, 1997 Miss. LEXIS 606 (Miss. 1997).

Mississippi is required by the United States Constitution, Art. IV, Sec. 1, to give full faith and credit to all final judgments of other states and federal courts unless (1) the foreign judgment was obtained as a result of some false representation without which the judgment would not have been rendered, or (2) the rendering court did not have jurisdiction over the parties or the subject matter; however, in order to challenge a foreign judgment on this ground, it is necessary that the challenge be timely and properly filed in Mississippi pursuant to § 15-1-45. Davis v. Davis, 558 So. 2d 814, 1990 Miss. LEXIS 19 (Miss. 1990).

A judgment is not a contract, and the seven years' limitation cannot be avoided by showing a new promise or acknowledgment in writing, as contemplated by Code 1880, § 2688. Berkson v. Cox, 73 Miss. 339, 18 So. 934, 1895 Miss. LEXIS 120 (Miss. 1895).

The section [Code 1871, § 2154] is subject to the exception in Code 1871, § 2157, as to the defendant's absence from the state. Kennard use of McGehee v. Alston, 62 Miss. 763, 1885 Miss. LEXIS 140 (Miss. 1885).

2. Limitation period as to residents.

Because the bank enrolled the foreign judgment nearly ten years after it was entered in Texas, almost three years outside the limitations period, the judgment was unenforceable and its enrollment in Mississippi was void because it was not timely filed. N. Dallas Bank & Trust Co. v. Mabry, 271 So. 3d 629, 2018 Miss. App. LEXIS 579 (Miss. Ct. App. 2018).

In a garnishment case in which (1) a lessor obtained a judgment against the lessees in 1990; (2) the lessor did not enroll the judgment in a Mississippi court within the three-year limitations period set forth in Miss. Code Ann. § 15-1-45; (3) the original judgment was revived as a new judgment under Ind. Code § 34-55-1-6; and (4) the lessor enrolled the judgment within the three-year limitations period set forth in Miss. Code Ann. § 15-1-45, the lessees had no viable claim for wrongful garnishment, malicious prosecution, abuse of process, negligence, gross negligence or intentional infliction of emotional distress. Smith v. RJH of Fla., Inc., 520 F. Supp. 2d 838, 2007 U.S. Dist. LEXIS 84863 (S.D. Miss. 2007).

Three-year Mississippi statute of limitation for enforcement of foreign judgments governed enforcement in Mississippi of Louisiana judgment ordering father to pay child support arrearage, since father was Mississippi resident at time Louisiana judgment was rendered; ten-year Louisiana statute of limitations for actions to enforce unpaid child support did not apply, even though mother and children resided in Louisiana during time father failed to pay support. Vice v. Department of Human Servs., 702 So. 2d 397, 1997 Miss. LEXIS 606 (Miss. 1997).

The language "at the time of the institution of the action" in § 15-1-45 refers to the action in which the judgment was rendered. Davis v. Davis, 558 So. 2d 814, 1990 Miss. LEXIS 19 (Miss. 1990).

Although this section did not prohibit a divorced wife from bringing suit for past due child support payments pursuant to a 1969 Louisiana divorce decree, it was applicable only after September 1973, the time at which the husband's then past due monthly payments were reduced to a final judgment. Hinds v. Primeaux, 367 So. 2d 925, 1979 Miss. LEXIS 2218 (Miss. 1979).

Where a judgment was rendered in Alabama against a nonresident of Mississippi on a cause of action which did not accrue in Mississippi, and the defendant thereafter became a resident of Mississippi, the statute of limitations ran from the date of the judgment rather than from the time the defendant became a resident of Mississippi. United States Fidelity & Guaranty Co. v. Ransom, 192 Miss. 286, 5 So. 2d 238, 1941 Miss. LEXIS 38 (Miss. 1941).

Three-year limitation statute for bringing action on foreign judgment against citizens residing in state at filing suit held not violative of full faith and credit clause; state may prescribe reasonable statute of limitation for suing on foreign judgment. Bosich v. Skermetti, 146 Miss. 491, 112 So. 385, 1927 Miss. LEXIS 248 (Miss. 1927).

Three-year limitation for commencement of action on foreign judgment against judgment debtor, who was resident at time of institution of action, refers to action in which judgment was rendered. Gray v. Valley, 136 Miss. 886, 101 So. 855, 1924 Miss. LEXIS 186 (Miss. 1924).

A plea of the statute of limitation of three years is bad if it fails to aver that the defendant was a resident of this state at the time suit was instituted. Marx v. Logue, 71 Miss. 905, 15 So. 890, 1894 Miss. LEXIS 23 (Miss. 1894).

RESEARCH REFERENCES

ALR.

Inclusion in domestic judgment or record, in action upon a judgment of a sister state of findings respecting the cause of action, on which the judgment in the sister state was rendered. 10 A.L.R.2d 435.

Conflict of laws as to time limitations governing action on foreign judgment. 36 A.L.R.2d 567.

§ 15-1-47. Lien of judgments limited.

A judgment or decree rendered in any court held in this state shall not be a lien on the property of the defendant therein for a longer period than seven years from the rendition thereof, unless an action be brought thereon before the expiration of such time. However, the time during which the execution of a judgment or decree shall be stayed or enjoined by supersedeas, injunction or other process, shall not be computed as any part of the period of seven years.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (13); 1857, ch. 57, art. 15; 1871, § 2159; 1880, § 2680; 1892, § 2750; 1906, § 3110; Hemingway's 1917, § 2474; 1930, § 2305; 1942, § 735.

Cross References — Judgment liens generally, see § 11-7-191.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Garnishment.
3. Stay of execution, supersedeas or injunction.
4. Tolling of limitations period.

1. In general.

Chancellor did not err in finding that a former wife's claim to a prior monetary judgment against a former husband was not yet barred by the statute of limitations because at the time the wife filed her motion for citation for contempt and for modification of alimony, the statute of limitations had not yet expired on her ability to collect the prior judgment; the wife filed her motion within the applicable seven-year statute-of-limitations period and based it on the prior underlying judgment. Smith v. Smith, 203 So. 3d 1150, 2016 Miss. App. LEXIS 737 (Miss. Ct. App. 2016).

A hospital which was jointly owned by a city and a hospital district, and was governed by a board of trustees jointly appointed by the city council and the county board of supervisors, was a "subdivision [of the state] or municipal corporation thereof" within the meaning and contemplation of Art 4, § 104 of the Mississippi Constitution and § 15-1-51. Thus, the 7-year period of limitations governing judgment liens set forth in § 15-1-47 was inoperative against the hospital. Enroth v. Memorial Hosp. at Gulfport, 566 So. 2d 202, 1990 Miss. LEXIS 432 (Miss. 1990).

Where defendants in ejectment suit had shown that the property involved therein had been sold by order of the chancery court, the purchase money paid and possession taken by the purchaser under such sale, and had testified, without contradiction, as to their good faith, they had thereby sustained their plea of the bar of the statute of limitations unless the plaintiffs could show in rebuttal that the sale was not in good faith. Gill v. Johnson, 206 Miss. 707, 40 So. 2d 600, 1949 Miss. LEXIS 295 (Miss. 1949).

Judgment lien of United States obtained in proceeding in Federal district court is subject, under applicable Federal statutes, to state statutes (§§ 733, 735, 1554, 1555, Code of 1942) governing the enrollment of judgments and limiting the duration of the lien thereof to seven years, notwithstanding provision of § 104, Constitution of 1890, that statutes of limitation in civil cases shall not run against the state, or any subdivision or municipal corporation thereof. United States v. Williams-Richardson Co., 206 Miss. 378, 40 So. 2d 177, 1949 Miss. LEXIS 268 (Miss. 1949).

A decree of a court of chancery establishing the arrears due on a life annuity charged upon lands is not within the operation of this provision (Code of 1857, Ch. 57, Art. XV, p. 401), to the effect that no judgment or decree rendered in any court held within the state shall be a lien upon the property of the defendant therein for a longer period of seven years from the rendition thereof. Canal Bank v. Hudson, 111 U.S. 66, 4 S. Ct. 303, 28 L. Ed. 354, 1884 U.S. LEXIS 1759 (U.S. 1884).

The general lien of a judgment can only be kept alive by a new action based upon the judgment. Stith v. Parham, 57 Miss. 289, 1879 Miss. LEXIS 72 (Miss. 1879); Buckner v. Pipes, 56 Miss. 366, 1879 Miss. LEXIS 130 (Miss. 1879).

2. Garnishment.

Where a party commences a garnishment proceeding when the underlying judgment is still valid, the statute of limitations for actions on judgments is tolled as to that particular party as to funds, due to the judgment debtor, that were in the hands of the garnishee when the garnishment proceeding was initiated and the underlying judgment was valid; a garnisher is not entitled to the funds due to the judgment debtor, which came into the garnishee's hands only after the underlying judgment lapsed. Quality Diesel Serv. v. Tiger Drilling Co., LLC, 190 So. 3d 860, 2016 Miss. LEXIS 2 (Miss. 2016).

Trial court erred in granting a limited liability company's (LLC) motion to dismiss a garnishment proceeding because a judgment creditor was not required to renew its underlying judgment against the judgment debtor for it to maintain its timely filed garnishment proceeding against the LLC, who was indebted to the debtor; the creditor brought its action within the seven-year period, and the underlying judgment had not lapsed as to its timely issued writs of garnishment and garnishment contest. Quality Diesel Serv. v. Tiger Drilling Co., LLC, 190 So. 3d 860, 2016 Miss. LEXIS 2 (Miss. 2016).

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run, and the purchaser failed to take advantage of the many procedural mechanisms available to him to extend the life of his judgment; thus, the judgment had been extinguished, and the purchaser could not bring a valid garnishment action. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

Purchaser was not legally enjoined from bringing an enforcement action of his own while a bank's garnishment action was stayed because no proceeding occurred that operated as an automatic stay of his judgment; the mere circumstance that the enforceability of the purchaser's final judgment was the subject matter of an appeal in a different party's garnishment action did not operate to enjoin the purchaser from attempting to collect the judgment. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

Seller was not estopped from asserting the statute of limitations defense because it never prevailed on the argument that the judgment entered in favor of the purchaser was uneforceable; therefore, if the seller was taking an inconsistent position, the doctrine of estoppel would not apply. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

Because a purchaser's circuit court judgment was not the underlying proceeding, it was not stayed by the order granting interlocutory appeal. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

A garnishee which failed to file an answer to a writ of garnishment as required by § 11-35-25 and instead paid $10 per week of the judgment debtor's salary directly to the attorney for the judgment holder was liable to the debtor for monies wrongfully withheld after expiration of the judgment where, although the judgment and execution thereon had expired after seven years as provided in §§ 15-1-3, 15-1-43 and although the judgment holder had failed to file another suit on the judgment prior to the expiration of the seven years as required by § 15-1-47 to extend the judgment lien, the garnishee continued to pay the $10 per week to the judgment holder for two years after the judgment had lapsed. Anderson-Tully Co. v. Brown, 383 So. 2d 1389, 1980 Miss. LEXIS 2023 (Miss. 1980).

Writ of garnishment could not be issued on old judgment after seven years, though suit on judgment was commenced before seven years expired. Buckley v. F. L. Riley Mercantile Co., 155 Miss. 150, 124 So. 267, 1929 Miss. LEXIS 268 (Miss. 1929).

Garnishment will not extend lien of the judgment upon which it is founded. Grace v. Pierce, 127 Miss. 831, 90 So. 590, 1921 Miss. LEXIS 286 (Miss. 1921).

3. Stay of execution, supersedeas or injunction.

Where a party appealed and obtained a bond styled "appeal bond with supersedeas" in an amount sufficient to effect supersedeas, and had the benefit of supersedeas in that execution of judgment was stayed, but there was no indication that the bonds were liable for the amount of judgment as required of supersedeas bonds by Code § 1973, such party was estopped, in a suit on the judgment which had been affirmed, from changing his position and contending that the bond did not toll the statute of limitations since it failed to include the conditions imposed by Code § 1163 requiring that the bond be conditioned that the appellant will satisfy the judgment or decree. Breland v. International Paper Co., 233 So. 2d 827, 1970 Miss. LEXIS 1686 (Miss. 1970).

4. Tolling of limitations period.

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run; the purchaser's motion to amend the mandate in the action the seller filed against him did not toll the statute. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032, 2014 Miss. LEXIS 31 (Miss. 2014).

The statutory limitations period is tolled where the execution on the judgment has been stayed by a filing for bankruptcy. Trustmark Nat'l Bank v. Pike County Nat'l Bank, 716 So. 2d 618, 1998 Miss. LEXIS 304 (Miss. 1998).

RESEARCH REFERENCES

Am. Jur.

46 Am. Jur. 2d, Judgments §§ 391 et seq.

CJS.

50 C.J.S., Judgments §§ 760, 761 et seq.

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

(1) All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after.

(2) In actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury.

(3) The provisions of subsection (2) of this section shall apply to all pending and subsequently filed actions.

HISTORY: Codes, 1880, § 2669; 1892, § 2737; 1906, § 3097; Hemingway's 1917, § 2461; 1930, § 2292; 1942, § 722; Laws, 1989, ch. 311, § 3; Laws, 1990, ch. 348, § 1, eff from and after passage (approved March 12, 1990).

Editor's Notes — Laws, 1989, ch. 311, § 7 effective from and after July 1, 1989, provides as follows:

"SECTION 7. The provisions of this act shall apply only to causes of action accruing on or after July 1, 1989."

Laws, 1990, ch. 348, § 2 provides as follows:

"SECTION 2. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts of this act shall be in no manner affected thereby but shall remain in full force and effect."

Cross References — Exceptions for issues of moneyed corporations or banks, see § 15-1-79.

Statute of limitation in contracts for sale, see § 75-2-725.

Effect of bank's customer failure to discover and report forgery or alteration of item, see § 75-4-406.

JUDICIAL DECISIONS

ANALYSIS

1. [Reserved for future use.]
2. In general.
3. —Matters provable by writing.
4. —Applicability.
5. —Particular cases.
6. Deeds of trust.

7. Covenants and conditions.
8. Demands for rent.
9. Bills and notes, generally.
10. —Payable in installments.
11. —Payable on demand.
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1. [Reserved for future use.]

[Reserved for future use.]

2. In general.

Where plaintiff did not file his action to recover funds after defendant's check to him bounced until almost four years after the check was first dishonored, plaintiff's action was barred by the statute of limitations in Miss. Code Ann. § 75-3-118(c), but the trial court's application of the statute of limitations in Miss. Code Ann. § 15-1-49 achieved the same result. Bryan v. Aron, 941 So. 2d 831, 2006 Miss. App. LEXIS 185 (Miss. Ct. App.), cert. denied, 942 So. 2d 164, 2006 Miss. LEXIS 648 (Miss. 2006).

Since there was no specific statute of limitations for claims on written contracts, Miss. Code Ann. § 15-1-49 therefore applied; as the determination had been made that the neighbor's cause of action accrued under contract, not as an action to recover land, § 15-1-49 and the three year statute of limitations prescribed therein applied; as was correctly found by the chancery court, the neighbor's claim was time barred by the statute of limitations. Lloyd v. Gibbes, 910 So. 2d 587, 2005 Miss. App. LEXIS 146 (Miss. Ct. App. 2005).

A conversion action was timely commenced 3 1/2-years after it accrued on May 23, 1989 pursuant to the limitations period in effect when the claim arose (§ 15-1-49); the mere failure of the legislature to retain the savings language when amending the statute to shorten the limitations period to 3 years did not express a "clear intent" that a shorter limitations period apply to already-accrued actions. First Bank v. Eastern Livestock Co., 886 F. Supp. 1328, 1995 U.S. Dist. LEXIS 7662 (S.D. Miss. 1995).

If no action on an anticipatory breach is brought before the time fixed by the contract for the beginning of the performance by the party who has committed such a breach, the period of statute of limitations begins to run only from the time so fixed by the contract. Old Ladies Home Ass'n v. Hall, 212 Miss. 67, 52 So. 2d 650, 1951 Miss. LEXIS 428 (Miss. 1951).

Writing sufficient to take case out of statute providing that actions on open account or stated account not acknowledged by writing shall be commenced within three years must contain an acknowledgment of indebtedness, or promise to pay, in such terms as to render supplementary evidence unnecessary. Blount v. Miller, 172 Miss. 492, 160 So. 598, 1935 Miss. LEXIS 157 (Miss. 1935).

The six-year statute governs, among other things, written contracts express or implied. Blodgett v. Pearl River County, 134 Miss. 816, 98 So. 227, 1923 Miss. LEXIS 233 (Miss. 1923).

Action for county taxes erroneously paid governed by 6-year statute of limitation; "provable by writing." Blodgett v. Pearl River County, 134 Miss. 816, 98 So. 227, 1923 Miss. LEXIS 233 (Miss. 1923).

Action on paid or cancelled check or draft to recover specified amount from payee, is not one on a written instrument, and the six-year statute does not apply. Wally v. L. N. Dantzler Lumber Co., 119 Miss. 700, 81 So. 489, 1919 Miss. LEXIS 47 (Miss. 1919).

Action for loss of cotton seed is one on written contract although bill of lading did not specify amount to be transported. Illinois C. R. Co. v. Jackson Oil & Refining Co., 111 Miss. 320, 71 So. 568, 1916 Miss. LEXIS 296 (Miss. 1916).

A recital in a deed of a consideration proved not to have been paid is a promise in writing only, barred under this section [Code 1942, § 722], as in the case of written promises. Fowlkes v. Lea, 84 Miss. 509, 36 So. 1036, 1904 Miss. LEXIS 83 (Miss. 1904).

3. —Matters provable by writing.

In order for a cause of action to come within the purview of this section [Code 1942, § 722], it is not required that it shall be evidenced by writing and signed by the party sought to be charged; it is only necessary that the cause of action shall be provable by writing, and an obligation to pay the same shall arise either expressly or by law. Blodgett v. Pearl River County, 134 Miss. 816, 98 So. 227, 1923 Miss. LEXIS 233 (Miss. 1923).

4. —Applicability.

Contempt action was timely because the statute of limitations in Miss. Code Ann. § 15-1-43 applied as a spouse's action sought enforcement of a hold-harmless provision of a property-settlement agreement, which by operation of Miss. Code Ann. § 93-5-2 became part of the final judgment of divorce. Moseley v. Smith, 180 So. 3d 667, 2014 Miss. App. LEXIS 689 (Miss. Ct. App. 2014), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 605 (Miss. 2015), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 625 (Miss. 2015).

With respect to his claim of wrongful termination, the former employee did not allege that he had a written contract of employment, and there was no proof that the employment relationship between the employee and his former employer, a manager, and a store services company was other than an unwritten contract. Therefore, Miss. Code Ann. § 15-1-49, the three-year statute of limitations applicable to an action for breach of a written contract of employment, did not apply to the employee's claim. Davis v. Belk Stores Servs., 2009 U.S. Dist. LEXIS 487 (S.D. Miss. Jan. 6, 2009).

This section, rather than § 15-1-29, applies to contracts for professional services. Law Firm of Logan & Bise v. Stewart (In re Estate of Stewart), 732 So. 2d 255, 1999 Miss. LEXIS 81 (Miss. 1999).

In an action on a guaranty contract, the general six-year statute of limitations Code § 15-1-49 would be applied rather than the one-year statute of limitations regarding actions following the foreclosure of an installment note. First Nat'l Bank v. Drummond, 419 So. 2d 154, 1982 Miss. LEXIS 2123 (Miss. 1982).

Where the action was one either in tort or for a wrongful breach of duty in a suit on a letter agreement, the three-year limitations statute applicable to open accounts did not apply, and the action was governed by the six-year statute of limitations. Bentz v. Vardaman Mfg. Co., 210 So. 2d 35, 1968 Miss. LEXIS 1491 (Miss. 1968).

Six-year statute of limitations is applicable to the liability of an insured for the payment of premiums, where such liability and the amount thereof were proved in writing. Neely v. Johnson-Barksdale Co., 194 Miss. 529, 12 So. 2d 924, 1943 Miss. LEXIS 86 (Miss. 1943).

A trainman's action against railroad for damages for wrongful discharge contrary to contract between railroad and trainmen's union was based on written contract with union rather than on verbal contract of employment, and hence was subject to six-year rather than to three-year statute of limitations. Moore v. Illinois C. R. Co., 180 Miss. 276, 176 So. 593, 1937 Miss. LEXIS 92 (Miss. 1937).

Six-year period of limitations applicable to all actions for which no other period is prescribed held applicable to action against stockholders of insolvent bank for their double liability, and not three-year period applicable to actions on unwritten contracts, since double liability of a stockholder is provable by writing, and therefore is not an implied contract, but written contract with an implied promise to pay. Rather v. Moore, 179 Miss. 78, 173 So. 664, 1937 Miss. LEXIS 8 (Miss. 1937).

Three-year statute of limitations would not be applicable to action against stockholders of insolvent State Bank for their double liability, even if such liability is statutory, since liability is not a "penalty," and hence six-year statute would apply. Rather v. Moore, 179 Miss. 78, 173 So. 664, 1937 Miss. LEXIS 8 (Miss. 1937).

In shipper's action for freight charges exceeding those authorized by Railroad Commission, three-year rather than six-year statute applied. Gulf & S. I. R. Co. v. Laurel Oil & Fertilizer Co., 172 Miss. 630, 172 Miss. 634, 158 So. 778, 159 So. 838, 160 So. 564, 1935 Miss. LEXIS 95 (Miss.), amended, 172 Miss. 654, 159 So. 838 (Miss. 1935).

Three-year statute is inapplicable to action on written contract. Vicksburg Waterworks Co. v. Yazoo & M. V. R. Co., 102 Miss. 504, 59 So. 825, 1912 Miss. LEXIS 81 (Miss. 1912).

A written acknowledgment of an open account converts it into "a stated account acknowledged in writing signed by the debtor" and the six years' limitation thereafter applies. Tennessee Brewing Co. v. Hendricks, 77 Miss. 491, 27 So. 526, 1899 Miss. LEXIS 75 (Miss. 1899).

5. —Particular cases.

Trial court properly found that the fraud, unjust enrichment, and claims related to decedent's photographs were time-barred under Miss. Code Ann. § 15-1-49 (2012) where the claims accrued when the legatees learned that the recording studio intended to use the photographs in 1990, but the legatees had not filed suit until over 20 years later. Anderson v. LaVere, 136 So. 3d 404, 2014 Miss. LEXIS 119 (Miss. 2014).

Chancellor erred in awarding a brother damages for actual and punitive because his claim fell under the three-year statute of limitations for which no other period of limitation was prescribed. Lott v. Saulters, 133 So. 3d 794, 2014 Miss. LEXIS 53 (Miss. 2014).

Documents signed by plaintiff employees in a Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C.S. § 2101 et seq., during orientation, setting forth their rate of pay and other information, did not constitute a written employment contract within the meaning of Miss. Code. Ann. § 15-1-49; Miss. Code. Ann. § 15-1-29 set forth the appropriate statute of limitations in the case. Brewer v. Am. Power Source, Inc., 517 F. Supp. 2d 881, 2007 U.S. Dist. LEXIS 74154 (N.D. Miss. 2007), aff'd, 291 Fed. Appx. 656, 2008 U.S. App. LEXIS 19338 (5th Cir. Miss. 2008).

Homeowners' predatory lending practices claims were time barred under Miss. Code Ann. § 15-1-49(1) because their respective transactions occurred well over the three years before the suit was brought and the homeowners failed to show any affirmative act of fraudulent concealment under Miss. Code Ann. § 15-1-67 to toll the statute of limitations. Carson v. McNeal, 375 F. Supp. 2d 509, 2005 U.S. Dist. LEXIS 13166 (S.D. Miss. 2005).

Home inspector overreached in his attempt to contractually create a private statute of limitations with two home buyers as the three-year statute of limitations under Miss. Code Ann. § 15-1-49 could not be changed by contract; the attempt to change the statute of limitations was void under Miss. Code Ann. § 15-1-5 and was substantively unconscionable. Pitts v. Watkins, 905 So. 2d 553, 2005 Miss. LEXIS 260 (Miss. 2005).

This section, rather than Miss. Code. Ann. § 15-1-41, applied to an action by a subcontractor against a sub-subcontractor for the latter's failure to use American made parts as required by the general contract as the subcontractor sought contract damages for an alleged breach, rather than damages arising out of an injury to person or property. Air Comfort Sys., Inc. v. Honeywell, Inc., 760 So. 2d 43, 2000 Miss. App. LEXIS 235 (Miss. Ct. App. 2000).

A store's setoff counterclaim against the shopping mall in which it was located was not barred by the 3-year statute of limitations set forth in § 15-1-29 where the store's setoff defense was based on allegedly fraudulent overcharges made by the mall which implied an action arising under the lease between the store and the mall, and therefore the store's fraud claim was subject to § 15-1-49's 6-year limitation period for an action on a written contract. Singing River Mall Co. v. Mark Fields, Inc., 599 So. 2d 938, 1992 Miss. LEXIS 135 (Miss. 1992).

In action against bail bondsmen and their surety alleging false imprisonment and malicious prosecution based upon allegedly improper arrest of plaintiff for jumping bail, applicable statute of limitations is 6-year period set forth in § 15-1-49 rather than one-year period set forth in § 15-1-35, since, although action is grounded in tort, it springs from underlying bond agreement between bail bondsmen and plaintiff. Mathis v. Indemnity Ins. Co., 588 F. Supp. 489, 1983 U.S. Dist. LEXIS 18293 (S.D. Miss. 1983).

In an action against a life insurer seeking recovery of double indemnity benefits that was filed more than four years subsequent to accrual of the claim, the trial court erred in concluding that the suit was barred by the three year statute of limitations governing accident and health insurance; although the policy, which was issued in connection with decedent's employment, was delivered to the insured rather than a master policy to the employer with a certificate to the employee, this fact did not remove the policy from the group insurance class or convert it to an individual plan; as a group policy, it was specifically exempted from the three-year statute of limitations and was controlled instead by the six-year statute of limitations. Williams v. Life Ins. Co., 367 So. 2d 922, 1979 Miss. LEXIS 2219 (Miss. 1979).

Where under a sales representative agreement with a manufacturer, the manufacturer was to pay commissions on specified sliding scale for orders up to $250,000 and special commission allowances were to be established by the manufacturer for jobs greater than that amount, the 6-year statute of limitations governing obligations on written contracts, was applicable rather than the 3-year statute governing actions on open account, notwithstanding that parole testimony was necessary to establish the amount due. Beacham v. Beacham, 243 So. 2d 62, 1971 Miss. LEXIS 1505 (Miss. 1971).

Where complainant adequately averred in his bill of complaint an executory written contract to form a partnership, the performance of the necessary conditions precedent to its performance, actual formation of the partnership, actions of both parties under it, and its existence at the time of his deceased co-partner's death, the bill sufficiently charged facts reflecting continuance of the partnership to the co-partner's death, and the six-year statute of limitations was not applicable. Kelly v. Windham, 204 So. 2d 477, 1967 Miss. LEXIS 1206 (Miss. 1967).

Action by seller against buyer on written order signed by buyer's president and seller's salesman, which gives accurate description of goods purchased, price and terms of sale, stipulates that all special terms must be incorporated in order and duplicate to be recognized and order is not subject to countermand, and under which goods were shipped and accepted by buyer, is controlled by six-year statute of limitations, and not by three-year statute of limitations (Code 1942, § 729). Dixie Pine Products Co. v. Universal Refining Products Co., 208 Miss. 45, 43 So. 2d 752, 1949 Miss. LEXIS 406 (Miss. 1949).

Where agent of insurer under life policy containing double indemnity provision tendered check for benefit payable for natural death of insured and stated to beneficiary who was ignorant of circumstances of insured's death that such amount was all insurer owed beneficiary, the beneficiary's acceptance of such amount and delivery of policy to insurer and failure for six years to make inquiry as to circumstances of insured's death, did not constitute "reasonable diligence" to determine cause of insured's death so as to toll limitations until discovery of true facts. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

Orders for funeral supplies setting forth description of goods purchased, price, and terms of sale, held "contracts provable by writing" upon acceptance by seller, so that action thereon, which was commenced within six years from maturity of items, was not barred by statute of limitations governing contracts not provable by writing. Champion Chemical Co. v. Hank, 174 Miss. 732, 165 So. 807, 1936 Miss. LEXIS 224 (Miss. 1936).

Advances of money and supplies made by lessor to lessee constitute an "open account" so as to require action thereon within three years after cause of action accrued, notwithstanding deed of trust given by lessee provided that advancements should be secured by deed, since writing was insufficient to make debt one acknowledged in writing under six-year statute of limitations. Blount v. Miller, 172 Miss. 492, 160 So. 598, 1935 Miss. LEXIS 157 (Miss. 1935).

Vendee's suit to recover money paid under oral contract of sale held governed by six-year limitation, in view of receipts setting out amounts received on account of the purchase price, which constituted sufficient acknowledgment in writing of a state of facts out of which the law implies an obligation to repay, and therefore obligation to repay did not rest in parole. Milam v. Paxton, 160 Miss. 562, 134 So. 171, 1931 Miss. LEXIS 194 (Miss. 1931).

Where devisees are each required to deliver to widow one bale of cotton annually, bequest to widow is not a trust, and action for failure to deliver cotton is governed by 6-year statute of limitations, since the implied promise of each of the devisees to deliver one bale of cotton is to perform a contract, the terms of which are contained in the will, a written instrument. Roberts v. Burwell, 117 Miss. 451, 78 So. 357, 1918 Miss. LEXIS 190 (Miss. 1918).

6. Deeds of trust.

Where in 1931 a deed of trust on certain land was issued to a bank as security for a loan, and later that land was sold at a tax sale and not redeemed, in 1939 the bank's remedy at law to recover the debt was barred by statute of limitations and direct remedy in equity was likewise barred. State v. Magnolia Bank, 212 Miss. 47, 53 So. 2d 79, 1951 Miss. LEXIS 426 (Miss. 1951).

This section [Code 1942, § 722] providing for six-year limitation period when no other period is prescribed, Code 1942, § 719, barring action on mortgage when debt it secures is barred and Code 1942, § 743, providing that completion of period of limitation bars action and defeats and extinguishes right, operate to extinguish on September 1, 1935, deed of trust given to secure note falling due on September 1, 1929, and, in absence of renewal, or institution of foreclosure proceedings, power of sale and all other rights conferred by deed of trust are utterly destroyed on that date. Perkins v. White, 208 Miss. 157, 43 So. 2d 897, 1950 Miss. LEXIS 237 (Miss. 1950).

Where trust deed to farm was executed by all of heirs except children of deceased daughter, and part of money advanced was used to discharge ancestor's trust deeds, right of assignee of trust deed to subrogation to trust deed as to grandchildren's undivided interest was barred by six-year limitation, notwithstanding mortgagors' alleged fraudulent representation that grandchildren were not heirs, where grandchildren did not participate in fraud, and not being joint tenants, but tenants in common with mortgagors, were not their "privies;" term "privies" meaning those who stand in mutual or successive relationship to same rights of property. Burton v. John Hancock Mut. Life Ins. Co., 171 Miss. 596, 157 So. 525, 158 So. 474, 1934 Miss. LEXIS 243 (Miss. 1934).

7. Covenants and conditions.

Where second deed is made to correct first deed, six-year statute against action on warranty begins to run from date of second deed. Wade v. Barlow, 99 Miss. 33, 54 So. 662, 1910 Miss. LEXIS 10 (Miss. 1910).

Where a vendor sells for part cash and part to be paid in installments, reserving a lien as security, the six-year limitation applies whether he proceeds on the promise contained in the deed or that implied by law from the vendee's acceptance of the deed. Washington v. Soria, 73 Miss. 665, 19 So. 485, 1896 Miss. LEXIS 190 (Miss. 1896).

8. Demands for rent.

The six years' statute applies to the demand for rents asserted by a plaintiff in ejectment. Lindenmayer v. Gunst, 70 Miss. 693, 13 So. 252, 1893 Miss. LEXIS 61 (Miss. 1893).

9. Bills and notes, generally.

Code § 15-1-49, rather than § 15-1-23, applied in an action by a bank for a deficiency judgment on an instrument guaranteeing payment of a secured note. First Nat'l Bank v. Drummond, 686 F.2d 1117, 1982 U.S. App. LEXIS 25292 (5th Cir. Miss. 1982).

The statute of limitations began to run as to each instalment due under the note from the time it falls due. Davis v. Agents Finance Corp., 249 Miss. 839, 164 So. 2d 449, 1964 Miss. LEXIS 439 (Miss. 1964).

Note which fell due on September 1, 1929, became barred by limitation under this section [Code 1942, § 722] upon expiration of six years thereafter, or on September 1, 1935. Perkins v. White, 208 Miss. 157, 43 So. 2d 897, 1950 Miss. LEXIS 237 (Miss. 1950).

This section [Code 1942, § 722] prescribes the period of limitation within which actions on promissory notes shall be commenced, as being six years next after the cause of action shall have accrued thereon. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

Mississippi statute of limitations controls in action in this state on note executed in Canada. Philp v. Hicks, 112 Miss. 581, 73 So. 610, 1916 Miss. LEXIS 150 (Miss. 1916).

Where bank paid check to person other than drawer, under belief indorsement was genuine, six-year statute was applicable and began to run from date bank rendered drawer a statement showing check charged against it. Masonic Ben. Ass'n v. First State Bank, 99 Miss. 610, 55 So. 408, 1911 Miss. LEXIS 232 (Miss. 1911).

The statute bars a note made in another state where the limit is ten years, although both maker and payee resided there at the time and the maker did not become a resident of this state until nearly six years after maturity. Wright v. Mordaunt, 77 Miss. 537, 27 So. 640, 1899 Miss. LEXIS 97 (Miss. 1899).

10. —Payable in installments.

Judgment for real estate seller was affirmed under Miss. Code Ann. § 15-1-29 and Miss. Code Ann. § 15-1-49 because, applying the three-year statute of limitations, the seller was entitled to collect installment payments beginning three years ago; the purchasers would have been unjustly enriched if allowed to retain possession of the property without being responsible for the remaining debt. Kersey v. Fernald, 911 So. 2d 994, 2005 Miss. App. LEXIS 699 (Miss. Ct. App. 2005).

Notwithstanding some evidence that the note sued on was a demand note, due three days after date, the chancellor was not manifestly wrong in holding that the note was in fact payable in installments, and was not barred by the statute of limitations, in view of the admission in the trust deed that the indebtedness was evidenced by promissory note payable in installments, and all the evidence and circumstances in the record showed that the note was in fact paid in installments. Davis v. Agents Finance Corp., 249 Miss. 839, 164 So. 2d 449, 1964 Miss. LEXIS 439 (Miss. 1964).

Generally where a note is payable in installments the statute of limitations begins to run as to each installment from the time when it falls due. Freeman v. Truitt, 238 Miss. 623, 119 So. 2d 765, 1960 Miss. LEXIS 447 (Miss. 1960).

11. —Payable on demand.

The statute of limitations set forth in this section [Code 1942, § 722] began running on a demand promissory note on the date of its execution, unaffected by any clause therein providing for the payment of interest at a certain percentage per annum until paid. United States Fidelity & Guaranty Co. v. Krebs, 190 So. 2d 857, 1966 Miss. LEXIS 1405 (Miss. 1966).

A promissory note, payable on demand after date with interest at rate of six per cent from date until paid, when considered together with deed of trust and with written agreement contemporaneously executed and delivered to payee, showed an intent that demand for payment be condition precedent to maturity of note and commencement of running of statute of limitations. Belhaven College v. Downing, 216 Miss. 299, 62 So. 2d 372, 1953 Miss. LEXIS 637 (Miss. 1953).

12. —Particular cases.

In a discriminatory lending suit filed by African American loan recipients against an auto financing corporation, the loan recipients' state law deceptive trade practices and common law claims were barred by the three-year statute of limitations in Miss. Code Ann. § 15-1-49(1), which was not tolled by the fraudulent concealment rule codified in Miss. Code Ann. § 15-1-67 because the loan recipients admitted that they knew the interest rates were high at the time they signed the loan documents, which clearly displayed the rates being charged. Archer v. Nissan Motor Acceptance Corp., 633 F. Supp. 2d 259, 2007 U.S. Dist. LEXIS 65570 (S.D. Miss. 2007), aff'd, 550 F.3d 506, 2008 U.S. App. LEXIS 25292 (5th Cir. Miss. 2008).

Holder was properly granted summary judgment because its 2005 action to recover funds due under the maker's promissory note, which was dated on September 7, 1999, was timely filed under the six-year statute of limitations in Miss. Code Ann. § 75-3-118(a), and the general three-year limitations period in Miss. Code Ann. § 15-1-49 did not apply. Jordan v. BancorpSouth Bank, 964 So. 2d 1205, 2007 Miss. App. LEXIS 603 (Miss. Ct. App. 2007).

In rejecting the argument that two loan officers were fraudulently joined to defeat diversity jurisdiction based on the statute of limitations, the court found that at least one of the loans at issue was not barred by the three year limitations period under Miss. Code Ann. § 15-1-49. Clark v. Ben. Miss., Inc., 280 F. Supp. 2d 570, 2003 U.S. Dist. LEXIS 16163 (S.D. Miss. 2003).

An agreement extending the maturity date of a promissory note was not void on the ground that the plaintiff, seeking a cancelation of a deed of trust securing such note, had signed it only after a casual reading thereof and that it did not reflect his intention, so as to make applicable the six-year statute of limitations. Alliance Trust Co. v. Armstrong, 185 Miss. 148, 186 So. 633, 1939 Miss. LEXIS 116 (Miss. 1939).

This section [Code 1942, § 722] was not applicable to a suit in chancery brought by a bank to confirm its title to real estate and to cancel the former owner's claim to the land after it had previously foreclosed the deed of trust on such land for default in payment of a note secured thereby and had become the purchaser of the land at foreclosure sale, notwithstanding that the suit was brought more than six years after the due date of the note, where the Chancellor held the foreclosure sale to be valid and did not grant the bank's alternative prayer for a further foreclosure if such foreclosure sale was valid, since if such sale was valid the purchaser was entitled to the relief granted at any date subsequent to the sale unless such relief should have become barred by some limitation of adverse possession. Anthony v. Bank of Wiggins, 183 Miss. 885, 184 So. 626, 1938 Miss. LEXIS 302 (Miss. 1938).

This section [Code 1942, § 722] of the statute is not applicable to a situation where a donor delivered certain promissory notes secured by mortgage to a bank in trust for certain beneficiaries and, the bank being incapable of performing the trust, the donor assumed control of such notes for the benefit of the beneficiaries and through his unauthorized act the notes became valueless giving rise to an action against his executor, since there existed a trust in regard to the notes and their intended security not cognizable by the courts of the common law within the purview of the ten-year statute of limitations. Yandell v. Wilson, 182 Miss. 867, 183 So. 382, 1938 Miss. LEXIS 202 (Miss. 1938).

Where note secured by deed of trust was extended from time to time, but fact of extensions was not noted on margin of record of deed of trust before remedy to enforce it appeared on face of record to be barred, or within six months thereafter, such extensions did not affect rights of subsequent purchasers for valuable consideration without notice of extensions. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

13. County and municipal obligations.

A cause of action against four highway patrolmen and their surety, alleging that the plaintiff had been beaten and abused by the highway patrolmen, was essentially an action against a public officer and the surety on his bond, was accordingly an action in contract, and was governed by the six year statutory limitation for written contracts, § 15-1-49, and not the one year statutory limitation period for tort actions, § 15-1-35. Shaw v. McCorkle, 537 F.2d 1289, 1976 U.S. App. LEXIS 7343 (5th Cir. Miss. 1976).

The dismissal by a former sheriff and tax collector of his action against the county for compensation for alleged services did not destroy the right of his assignee, who was to obtain a portion of any recovery, and since the assignee's right was dependent upon the right of his assignor, assignee's action should have been brought within six years from the date of the expiration of the term of office of the former sheriff and tax collector, and, where it was not, the claim was barred. Smith v. Copiah County, 232 Miss. 838, 100 So. 2d 614, 1958 Miss. LEXIS 337 (Miss. 1958).

Ex-sheriff's claim for additional fees for summoning jurors in circuit court and for other services rendered and not otherwise provided for in connection with said court during year 1940 is barred by six-year statute of limitations when his declaration is filed on August 18, 1947. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

The six-year statute of limitations was applicable to the right of a teacher in an agricultural high school to demand payment of salary from the proceeds of bonds to be issued by the county and to compel issuance of such bonds by mandamus upon failure of the board of supervisors (which was not shown to have ever been advised of the existence of the obligation until suit was filed), otherwise to do so. Fuqua v. Board of Supervisors, 192 Miss. 6, 4 So. 2d 350, 1941 Miss. LEXIS 7 (Miss. 1941).

Action by heirs of tax collector for commissions, brought within six years after filing and rejection of claim by supervisors, but more than six years after right to file claim accrued, held barred by limitations, in absence of showing that heirs had been legally restrained. Grenada County v. Nason, 174 Miss. 725, 165 So. 811, 1936 Miss. LEXIS 226 (Miss. 1936).

Six-year statute of limitation held applicable to claim of county clerk for balance of salary alleged to be due him. De Soto County v. Wood, 150 Miss. 432, 116 So. 738, 1928 Miss. LEXIS 141 (Miss. 1928).

Claim of member of board of supervisors for compensation is barred by six-year and not three-year statute. Madison County v. Collier, 79 Miss. 220, 87 Miss. 204, 30 So. 610 (Miss. 1905).

A claim against a county will be barred where an action is not brought thereon within six years after it is rejected by the commissioners. Honea v. Board of Sup'Rs., 15 So. 789 (Miss. 1894).

14. Judgments.

The statute applies to a divorced wife's suit for property awarded to her by the divorce decree. Rubisoff v. Rubisoff, 242 Miss. 225, 133 So. 2d 534, 1961 Miss. LEXIS 548 (Miss. 1961).

This statute [Code 1942, § 722] applies to an action to recover damages for failure to turn over property as directed by a decree of divorce. Rubisoff v. Rubisoff, 242 Miss. 225, 133 So. 2d 534, 1961 Miss. LEXIS 548 (Miss. 1961).

A suit upon a judgment within the statutory period is the only means by which the lien of the judgment can be extended. Street v. Smith, 85 Miss. 359, 37 So. 837, 1904 Miss. LEXIS 159 (Miss. 1904).

In case of a recovery in an action by an assignee of a judgment to renew the same the judgment roll need not show the assignment or that the new judgment was based on the assigned one. Street v. Smith, 85 Miss. 359, 37 So. 837, 1904 Miss. LEXIS 159 (Miss. 1904).

A judgment by default was taken, shown by the record to be void, the defendant not being summoned, and the case went off the docket. Eleven years thereafter plaintiff, treating the suit as pending, had the defendant summoned. Held, that as the original cause of action was barred, and the judgment, if valid, was also barred, defendant was protected by the statute. Berkson v. Coen, 71 Miss. 650, 16 So. 204, 1893 Miss. LEXIS 110 (Miss. 1893).

15. Torts, generally.

Trial court properly granted summary

judgment in favor of a school and its team doctor as to alumni's claims of invasion of privacy because there was no evidence that the dean of schools watched the alumni while they showered in his home, and thus, there also was no evidence of a latent injury; without a latent injury, the statute of limitations wa not tolled, and the alumni's claims were time-barred. Raddin v. Manchester Educ. Found., 175 So. 3d 1243, 2015 Miss. LEXIS 507 (Miss. 2015).

Discovery rule did not toll the statute of limitations for alumni's claims for invasion of privacy because there was nothing secretive about the monitoring process of drug screens or physicals; all students were aware that they were being monitored by the dean of schools or other male teachers/coaches while specimens were being collected and that physicals were being performed by the dean or the team doctor while the students were undressed. Raddin v. Manchester Educ. Found., 175 So. 3d 1243, 2015 Miss. LEXIS 507 (Miss. 2015).

Because alumni were unable to prove a latent injury, all battery claims were barred by the one-year statute of limitations; the discovery rule did not apply because the alumni admittedly were aware of the touching when it occurred ,and the only new information was the public knowledge of the dean's actions as to the three students who caught him viewing them while showering and his designation as a pedophile. Raddin v. Manchester Educ. Found., 175 So. 3d 1243, 2015 Miss. LEXIS 507 (Miss. 2015).

Trial court properly granted summary judgment in favor of a school and its team doctor because all alleged intentional torts occurred more than one year prior to alumni filing suit; the discovery rule did not apply because the alumni could not allege a claim of latent injury. Raddin v. Manchester Educ. Found., 175 So. 3d 1243, 2015 Miss. LEXIS 507 (Miss. 2015).

Trial court properly denied an employer's motion for summary judgment because, while there were components of a contractual relationship, an employee's wrongful discharge claim remained a tort and tort principles, including the three-year statute of limitations, applied where the employee's public policy-based retaliatory discharge claim was based in tort and the employer's duty not to retaliate against the employee for reporting suspected patient abuse. Cmty. Care Ctr. of Aberdeen v. Barrentine, 160 So. 3d 216, 2015 Miss. LEXIS 148 (Miss. 2015).

Death row inmates were not entitled to have the three-year statute of limitations for personal injury actions in Miss. Code Ann. § 15-1-49 tolled based upon fraudulent concealment under Miss. Code Ann. § 15-1-67 because there was no evidence that the State affirmatively concealed its protocol governing the manner in which it carried out executions or that the inmates did not know that a 42 U.S.C.S. § 1983 action was the proper method for challenging the State's lethal injection protocol. Walker v. Epps, 587 F. Supp. 2d 763, 2008 U.S. Dist. LEXIS 53793 (N.D. Miss.), aff'd, 550 F.3d 407, 2008 U.S. App. LEXIS 25327 (5th Cir. Miss. 2008).

Trial court properly granted summary judgment in favor of county hospital where an individual did not file suit against the hospital until more than two years after tripping on its sidewalk; the hospital's contract with a private management company to run the hospital did not exempt it from the Mississippi Tort Claims Act. Thus, the one year statute of limitations in Miss. Code Ann. § 11-46-11, and the not the three year statute of limitations in Miss. Code Ann. § 15-1-49, applied. Allstadt v. Baptist Mem. Hosp., 2004 Miss. App. LEXIS 847 (Miss. Ct. App. Aug. 24, 2004), op. withdrawn, sub. op., 893 So. 2d 1083, 2005 Miss. App. LEXIS 133 (Miss. Ct. App. 2005).

Mississippi follows general rule that tortious act gives rise to but single cause of action. Kemp v. G.D. Searle & Co., 103 F.3d 405, 1997 U.S. App. LEXIS 190 (5th Cir. Miss. 1997).

Tort actions arising from contractual obligations should be controlled by and subject to the tort prescriptions of § 15-1-49. Trammell v. State, 622 So. 2d 1257, 1993 Miss. LEXIS 328 (Miss. 1993).

Wrongful or fraudulent foreclosure of property action is case action governed by 6 year statute of limitations (§ 15-1-49), not by one year statute of limitations applicable to specified intentional torts

(§ 15-1-35). Southern Land & Resources Co. v. Dobbs, 467 So. 2d 652, 1985 Miss. LEXIS 2019 (Miss. 1985).

Where the action was one either in tort or for a wrongful breach of duty in a suit on a letter agreement, the three-year limitations statute applicable to open accounts did not apply, and the action was governed by the six-year statute of limitations. Bentz v. Vardaman Mfg. Co., 210 So. 2d 35, 1968 Miss. LEXIS 1491 (Miss. 1968).

16. —Contracts.

All of the growers were aware of the matters that were allegedly misrepresented to them by the farm well in excess of three years before the suits were filed; therefore, Miss. Code Ann. § 15-1-49 operated to bar the growers' claims. Sanderson Farms, Inc. (Prod. Div.) v. Ballard, 917 So. 2d 783, 2005 Miss. LEXIS 660 (Miss. 2005).

Trial court's 1994 order of dismissal without prejudice was not a judgment or decree and not subject to the seven-year statute of limitations under Miss. Code Ann. § 15-1-43; instead subcontractor's claims were subject to the three-year statute of limitations under Miss. Code Ann. § 15-1-49, and were thus time-barred because they were not filed within three years after the date of the order of dismissal. Haycraft v. Mid-State Constr. Co., 915 So. 2d 1117, 2005 Miss. App. LEXIS 1000 (Miss. Ct. App. 2005).

A bad faith breach of contract cause of action arising from an attorney's alleged failure to properly pursue an appeal alleged the tort of bad faith, not a breach of contract per se, and was therefore governed by the 6-year general limitation in § 15-1-49 rather than the 3-year statute of limitations in § 15-1-29 for actions based on unwritten contracts. Hurst v. Southwest Miss. Legal Servs. Corp., 610 So. 2d 374, 1992 Miss. LEXIS 751 (Miss. 1992), overruled, Rains v. Gardner, 731 So. 2d 1192, 1999 Miss. LEXIS 47 (Miss. 1999).

17. — Personal injuries.

Motorist was in the truck, in front of the driver, in plain view and within earshot of his pleas to exit the vehicle to talk, and he testified multiple times that the motorist meant to hit him with his truck; this amounted to definitive, uncontested evidence that served to defeat the driver's requested recovery and barred his claims under the statute. Sanderson Farms, Inc. v. McCullough, 212 So. 3d 69, 2017 Miss. LEXIS 39 (Miss. 2017).

Circuit court properly denied summary judgment with respect to the homeowners' personal injury claims against the property manager and homeowners' association where the determination of the time at which one homeowner knew or by reasonable diligence should have known of his bronchiectasis was a fact question that had to be resolved by a jury, and thus, a genuine issue of fact existed as to whether the homeowners were within the three-year statute of limitations when they filed their complaint. Ridgway Lane & Assocs. v. Watson, 189 So. 3d 626, 2016 Miss. LEXIS 98 (Miss. 2016).

Summary judgment was properly granted to the owner of man buggy that was involved in an accident, because the applicable statute of limitations had run, and the owner was not properly substituted for a fictitious party into the accident victim's complaint, as the victim possessed enough information to determine the legal entity that owned the buggy, given that the owner's label was on the buggy. The amendment by the victim to add the owner as a party did not relate back to the filing of the complaint because the victim failed to establish that the victim utilized reasonable diligence to timely identify the owner as a fictitious party. Davenport v. Hertz Equip. Rental Corp., 187 So. 3d 194, 2016 Miss. App. LEXIS 112 (Miss. Ct. App. 2016).

Trial court properly granted summary judgment in favor of a school and its team doctor because alumni's negligence and breach-of-contract claims were time-barred; because all of the alumni testified that they were not injured while they were students at the school, they could not claim a latent injury invoked the discovery rule, and if the alumni could not prove a latent injury, there was no tolling of the statutes of limitation. Raddin v. Manchester Educ. Found., 175 So. 3d 1243, 2015 Miss. LEXIS 507 (Miss. 2015).

Mother's motion to amend her complaint under Fed. R. Civ. P. 60 to add a medical retail store as a defendant in her action seeking damages for her son's injury in a wheelchair was denied because the mother voluntarily dismissed the store under Fed. R. Civ. P. 41(a)(2), the statute of limitations of Miss. Code Ann. § 15-1-49 had expired, and the court failed to perceive any legitimate basis for the mother's insistence that she was duped into believing that she had purchased the wheelchair by the "innocent seller" arguments of the store and the wheelchair's manufacturer under Miss. Code Ann. § 11-1-63. Braswell v. Invacare Corp., 760 F. Supp. 2d 679, 2010 U.S. Dist. LEXIS 140025 (S.D. Miss. 2010).

In a son's negligence action seeking damages for personal injuries from his father, the father was deemed to have waived his right to assert insufficiency of process due to the son's failure to serve process on the father until nine months after the expiration of the 120-day period in Miss. R. Civ. P. 4(h) where the father asserted insufficient service as a defense in his answer but then proceeded to participate in discovery, engage in settlement talks, and notice the son's deposition over the next two years and did not raise the service of process issue again until the three-year statute of limitations in Miss. Code Ann. § 15-1-49 expired. Whitten v. Whitten, 956 So. 2d 1093, 2007 Miss. App. LEXIS 356 (Miss. Ct. App. 2007).

In a personal injury case removed from state court, a company's motion to dismiss was granted because the company was not served within the 120-day period provided for by Miss. R. Civ. P. 4(h), and the worker failed to re-file his complaint within the three-year period provided for in Miss. Code. Ann. § 15-1-49(1). Riley v. Ga. Pac. Corp., 2006 U.S. Dist. LEXIS 1626 (N.D. Miss. Jan. 5, 2006).

Discovery rule did not apply where the acts of abuse alleged by the victim were physical acts of which a person was generally aware when the event occurred; the victim was aware of the abuse at the time of its occurrence, and whether or not the victim was mentally capable of understanding the physical acts she endured when they occurred was not the critical inquiry with the discovery rule. Doe v. Roman Catholic Diocese, 947 So. 2d 983, 2006 Miss. App. LEXIS 435 (Miss. Ct. App. 2006), cert. denied, 2007 Miss. LEXIS 90 (Miss. Jan. 25, 2007).

This section applied to an action for injuries sustained by a darkroom technician caused by exposure to toxic chemicals. Cannon v. Mid-South X-Ray Co., 738 So. 2d 274, 1999 Miss. App. LEXIS 72 (Miss. Ct. App. 1999).

Under Mississippi law, recipient of intrauterine device had single cause of action which accrued when she discovered her pelvic inflammatory disease and its source, notwithstanding her attempt to characterize her subsequently diagnosed infertility as separate injury for accrual purposes. Kemp v. G.D. Searle & Co., 103 F.3d 405, 1997 U.S. App. LEXIS 190 (5th Cir. Miss. 1997).

In a personal injury action against a city and city officials, the 6-year statute of limitations set forth in § 15-1-49, rather than the 2-year statute of limitations set forth in § 11-46-11(3) of the Tort Claims Act, applied since the Tort Claims Act had not yet taken effect. Starnes v. Vardaman, 580 So. 2d 733, 1991 Miss. LEXIS 312 (Miss. 1991).

A claim seeking damages for personal injuries was not barred by § 15-1-49, where the six-year statute of limitations expired on Sunday and the claim was filed on the following Monday. Nelson v. James, 435 So. 2d 1189, 1983 Miss. LEXIS 2787 (Miss. 1983).

Plaintiff injured on drilling platform located on the outer continental shelf offshore of the coast of Louisiana cannot take advantage of Mississippi's 6-year limitations period by filing his personal injury action under the Outer Continental Shelf Land Act (43 USCS § 1331 et seq.) in Mississippi; the Act itself provides that the civil and criminal laws of the adjacent state apply. Bonner v. Chevron U.S.A., Inc., 512 F. Supp. 1313, 1981 U.S. Dist. LEXIS 11962 (S.D. Miss. 1981), aff'd, 668 F.2d 817, 1982 U.S. App. LEXIS 21588 (5th Cir. Miss. 1982).

This section is applicable to strict products liability in tort actions and, in personal injury actions, the statute begins to run from the time that injuries are sustained. Ford Motor Co. v. Broadway, 374 So. 2d 207, 1979 Miss. LEXIS 2224 (Miss. 1979).

Where a Tennessee resident, employed in that state and covered under its workmen's compensation laws, was injured in an automobile collision occurring in Mississippi and filed a third-party diversity action in Mississippi to recover his damages, the Mississippi six-year statute of limitations was controlling rather than the 18-month limitation imposed on third party actions by the Tennessee workmen's compensation law. Graham v. Red Ball Motor Freight, Inc., 262 F. Supp. 49, 1966 U.S. Dist. LEXIS 7485 (N.D. Miss. 1966).

18. —Wrongful death.

Plaintiff's father fell and sustained a head injury on December 19, 2007, and any survival claims accrued at that time; the remaining wrongful-death claims accrued when the father died on January 5, 2008, and the three-year catch-all statute of limitations applied. Patel v. Hill-Rom Co., 194 So. 3d 898, 2016 Miss. App. LEXIS 432 (Miss. Ct. App. 2016).

Administrator's actions alleging wrongful death, intentional infliction of emotional distress, and civil conspiracy were all barred by the one-year statute of limitations, and the discovery rule did not apply because all three of these actions had prescribed limitations periods. Sharkey v. Barber, 188 So. 3d 1245, 2016 Miss. App. LEXIS 73 (Miss. Ct. App. 2016).

Wrongful death case was not time barred under Miss. Code Ann. § 15-1-49 because the savings provision in Miss. Code Ann. § 15-1-69 applied since a voluntary dismissal without prejudice in federal court was considered a matter of form where it was based on subject matter jurisdiction. Several beneficiaries continually and in good faith sought to have the merits of their case heard in Mississippi state court, they sought a Fed. R. Civ. P. 54(b) certified judgment to challenge a federal district court's subject matter jurisdiction, and they timely refiled their second cause of action within one year of the dismissal of the first case. Marshall v. Kan. City S. Rys., 7 So. 3d 210, 2009 Miss. LEXIS 106 (Miss. 2009).

Miss. Code Ann. § 11-7-13 wrongful-death claims of the wrongful-death beneficiaries matured–and Miss. Code. Ann. § 15-1-49, the statute of limitations on those claims, began to run–on April 17, 2000, not because that was the day the decedent died, but rather because that was the first day ("if death had not ensued") the decedent could have brought a claim. Caves v. Yarbrough, 991 So. 2d 142, 2008 Miss. LEXIS 617 (Miss. 2008).

When a tortfeasor negligently injures someone and a claim arises, the injured party generally has three years to bring a claim, pursuant to Miss. Code. Ann. § 15-1-49. If the injured party subsequently dies, the wrongful-death beneficiaries simply step into the shoes of the deceased person and may–assuming the deceased person brought no claim prior to death–bring claims the deceased person could have brought if death had not ensued. Caves v. Yarbrough, 991 So. 2d 142, 2008 Miss. LEXIS 617 (Miss. 2008).

Wrongful death claim against the corporations was time-barred and summary judgment was properly granted in favor of the corporations on the wife's wrongful death claim where the statute of limitations expired before litigation commenced. May v. Pulmosan Safety Equip. Corp., 948 So. 2d 483, 2007 Miss. App. LEXIS 53 (Miss. Ct. App. 2007).

Under Miss. Code Ann. § 11-7-13, wrongful death claims premised on negligence, strict liability, and breach of implied warranties were time-barred under the applicable three-year limitations period of Miss. Code Ann. § 15-1-49, because the claims accrued at the time of diagnosis of the decedent's latent disease and there were no allegations of a confidential or fiduciary relationship to establish a breach of duty of disclosure of toxic substances for a fraudulent concealment claim. Wells v. Radiator Specialty Co., 413 F. Supp. 2d 778, 2006 U.S. Dist. LEXIS 18082 (S.D. Miss. 2006).

In a wrongful death case, an amendment of a complaint under Miss. R. Civ. P. 15(c) was properly denied because the causes of action did not arise out of the same nucleus of common facts; one dealt with the design and manufacturing of a vehicle, while the other dealt with the failure to inspect and repair the vehicle before resale, and therefore, the statute of limitations had run on the proposed claim since relation back did not apply. Russell v. Ford Motor Co., 960 So. 2d 495, 2006 Miss. App. LEXIS 758 (Miss. Ct. App. 2006), cert. denied, 959 So. 2d 1051, 2007 Miss. LEXIS 387 (Miss. 2007).

Personal representatives' amended complaint against a convenience store in a wrongful death action was dismissed because the minor's savings statute, Miss. Code Ann. § 15-1-59, did not toll the general statute of limitations, Miss. Code Ann. § 15-1-49, which otherwise barred the wrongful death claim against the convenience store. Anderson v. R & D Foods, Inc., 913 So. 2d 394, 2005 Miss. App. LEXIS 294 (Miss. Ct. App. 2005).

In November 1997, plaintiff brought suit for wrongful death, but the record reflected that she failed to properly serve process upon defendant within 120 days. Because process was not served within the 120-day period as provided by Miss. R. Civ. P. 4(h), the running of the statute of limitations resumed; further, the statute of limitations ran in March, 2000, some 14 months prior to defendant's motion to dismiss and some 19 months prior to plaintiff's filing of a second identical wrongful death action, and therefore, when plaintiff filed her second action, the three year statute of limitation set forth in Miss. Code Ann. § 15-1-49 had run. Owens v. Mai, 891 So. 2d 220, 2005 Miss. LEXIS 18 (Miss. 2005).

Action for wrongful death brought by statutory heirs of decedent, alleging that decedent came into contact with toxic substances during his employment with defendant, resulting in his death, was time-barred where approximately 8 ½ years elapsed between decedent's death and filing of present action; negligence actions being governed by § 15-1-49 (6 years), actions based on intentional infliction of emotional distress being controlled by § 15-1-35 (one year), and breach of warranty actions governed by § 75-2-725 (6 years), whether defendants' acts were characterized as intentional or negligent, longest possible limitations period under Mississippi law would be 6 years. Brown v. Dow Chemical Co., 777 F. Supp. 504, 1989 U.S. Dist. LEXIS 17546 (S.D. Miss.), aff'd, 889 F.2d 272, 1989 U.S. App. LEXIS 16794 (5th Cir. Miss. 1989).

Addition to wrongful death complaint of allegation that bed sores contributed to decedent's death did not constitute new cause of action and would not be barred by 6-year statute of limitations where 7 years had elapsed from time of decedent's death to plaintiff's seeking addition of allegation. Hurst v. Beverly Enterprises, 724 F. Supp. 437, 1989 U.S. Dist. LEXIS 13679 (S.D. Miss. 1989).

Factual allegation that bedsores contributed to nursing home patient's death, which was added to complaint against nursing home more than 7 years after patient's death, was not barred by 6-year statute of limitations where wrongful death action had been commenced within 6-year period. Hurst v. Beverly Enterprises, 724 F. Supp. 437, 1989 U.S. Dist. LEXIS 13679 (S.D. Miss. 1989).

Cause of action based upon wrongful death statute (§ 11-7-13), being predicated upon defendant's intentional torts, is governed by one year statute of limitations, rather than 6 year statute of limitations, as actions filed pursuant to wrongful death statute must be brought within corresponding prescription statute for which cause of action is predicated. Veselits v. Veselits, 653 F. Supp. 1570, 1987 U.S. Dist. LEXIS 1348 (S.D. Miss.), aff'd, 824 F.2d 391, 1987 U.S. App. LEXIS 10851 (5th Cir. Miss. 1987).

Prior to the enactment of § 15-1-36 in 1976, a cause of action for the wrongful death of a child in a medical malpractice context accrued to its parents as of the date of the child's death. Jackson-Hinds Bank v. Mid-South Pools, Ltd., 196 So. 2d 91, 1967 Miss. LEXIS 1478 (Miss. 1967).

19. —Infliction of emotional distress.

After an employee was terminated, and his employers refused to reimburse his expenses, his claims for negligent infliction of emotional distress and tortious interference with business relations were clearly not time-barred; however, the facts had to be more closely examined to determine whether the claims for defamation and intentional infliction of emotional distress were time-barred. Smith v. Antler Insanity, LLC, 58 F. Supp. 3d 716, 2014 U.S. Dist. LEXIS 152484 (S.D. Miss. 2014).

There was no error in dismissing a claim for negligent infliction of emotional distress because a complaint actually alleged a claim for intentional infliction of emotional distress, which was governed by a one-year statute of limitations. The complaint stated that a paramour's acts were reckless and without justification, the acts of the paramour evoked outrage and disgust in civilized society, and the pattern of conduct perpetrated by the paramour caused foreseeable harm. Anderson v. Ladner, 198 So. 3d 381, 2016 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 202 So. 3d 617, 2016 Miss. LEXIS 364 (Miss. 2016).

Dismissing a husband's negligent infliction of emotional distress claim against his former wife as untimely was error as Miss. Code Ann. § 15-1-49 (Rev. 2012) applied, and the claims were filed within the three-year period. Breeden v. Buchanan, 164 So. 3d 1057, 2015 Miss. App. LEXIS 45 (Miss. Ct. App.), cert. denied, 160 So. 3d 704, 2015 Miss. LEXIS 210 (Miss. 2015).

In Mississippi, the three year catch all statute of limitations found at Miss. Code Ann. § 15-1-49 applies to claims for alienation of affection and negligent infliction of emotional distress. Bristow v. Baskerville, 2010 U.S. Dist. LEXIS 129131 (S.D. Miss. Dec. 6, 2010), vacated, 2011 U.S. Dist. LEXIS 41860 (S.D. Miss. Apr. 12, 2011).

In a Title VII racial discrimination case in which an employee's claim for negligent infliction of emotional distress was not barred by the three-year limitation period in Miss. Code Ann. § 15-1-49, the claim nonetheless failed since a claim for negligent infliction of emotional distress did not arise from acts of intentional discrimination. Furthermore, any state tort claim grounded in negligence asserted by the employee would be barred by the exclusive remedy provision of the Mississippi Workers' Compensation Law. Fortenberry v. Gulf Coast Cmty. Action Agency, Inc., 2007 U.S. Dist. LEXIS 89831 (S.D. Miss. Dec. 5, 2007).

Where plaintiff's claims for negligence, including her claim for negligent infliction of emotional distress, must have been filed with the court on or before July 30, 2002, in order to comply with the limitation period set forth in Miss. Code Ann. § 15-1-49, plaintiff did not comply with the limitation period where plaintiff's complaint was filed with the court on August 13, 2002. Therefore, unless the statute of limitations was tolled in some manner, plaintiff's claims were time barred. Hampton v. Gannett Co., 296 F. Supp. 2d 716, 2003 U.S. Dist. LEXIS 22788 (S.D. Miss. 2003).

The statute of limitations applicable to intentional infliction of emotional distress is three years. Hubbard v. Miss. Conf. of the United Methodist Church, 138 F. Supp. 2d 780, 2001 U.S. Dist. LEXIS 5358 (S.D. Miss. 2001).

Causes of action for negligent infliction of emotional distress and negligently causing arrest of another are subject to 6-year statute of limitations rather than one-year statute of limitations, where causes of action do not charge intentional torts, and are more analagous to common law "case" actions than to trespass actions. King v. Otasco, Inc., 861 F.2d 438, 1988 U.S. App. LEXIS 16469 (5th Cir. Miss. 1988).

Tort of intentional infliction of emotional distress is of same type of tort as menace and therefore covered by one-year statute of limitations and not by residual 6 year statute of limitations. Guthrie v. J.C. Penney Co., 803 F.2d 202, 1986 U.S. App. LEXIS 32673 (5th Cir. Miss. 1986).

20. —Products liability.

Claimant's lawsuit against a manufacturer, alleging an injury of lung disease and silica related conditions caused by exposure to respirable crystalline silica while using defective respirators made by the manufacturer, was time-barred because the claimant was aware of and sought treatment for lung disease more than three years before filing the lawsuit. The claimant's experts opined that the claimant's myriad of medical conditions, for which the claimant sought treatment years earlier, were related in part or exacerbated by silica exposure. Am. Optical Corp. v. Estate of Rankin, 227 So. 3d 1062, 2017 Miss. LEXIS 190 (Miss. 2017).

Because all of plaintiff's claims were premised upon unadorned conclusory allegation that defendant failed to follow Food and Drug Administration's pre-approved manufacturing process for Class III medical device, plaintiff failed to articulate parallel state law claim, and thus, her claims were expressly and impliedly preempted pursuant to Medical Device Amendments of 1976 to Federal Food, Drug and Cosmetic Act; even if plaintiff's claims were not preempted, her state law claims were barred by Mississippi's three- and six-year statute of limitations, and plaintiff was not entitled to the benefit of discovery rule as plaintiff did not suffer latent injury. Williams v. CIBA Vision Corp., 100 F. Supp. 3d 585, 2015 U.S. Dist. LEXIS 56532 (S.D. Miss. 2015).

In a product liability suit, pursuant to Miss. R. Civ. P. 9(h) and 15(c)(2), a patient's second amended complaint, which substituted a medical device manufacturer for an unknown defendant, related back to the date of the original complaint naming a fictitious defendant, and was thus timely under Miss. Code Ann. § 15-1-49, because the patient made a reasonably diligent inquiry into the identity of the manufacturer where the suit was filed one day before the three-year limitations period in Miss. Code Ann. § 15-1-49 expired; less than three months elapsed between when the hospital that used the device on the patient supplied an erroneous manufacturer's name and when the patient sought to substitute that manufacturer's name for the fictitious party designation; and the patient sought to substitute the correct manufacturer for the first manufacturer within three weeks after learning that the manufacturer had actually made the device. Scoggins v. Boston Sci. Corp., 2008 U.S. Dist. LEXIS 35507 (N.D. Miss. Apr. 22, 2008).

In a case involving a dispute over an allegedly defective roof, summary judgment was properly granted in favor of several builders because the action was untimely; Miss. Code Ann. § 11-1-63 and Miss. Code Ann. § 15-1-49 did not apply because an improvement to real property was not a product. Ferrell v. River City Roofing, Inc., 912 So. 2d 448, 2005 Miss. LEXIS 517 (Miss. 2005).

Trial court erred in denying the company summary judgment as the employee and the clinic knew or reasonably should have known of her exposure to paint fumes on the very night the exposure occurred; the statute of limitations, Miss. Code Ann. § 15-1-49(2) barred the employee's action against the company and summary judgment for the company was appropriate. PPG Architectural Finishes, Inc. v. Lowery, 909 So. 2d 47, 2005 Miss. LEXIS 513 (Miss. 2005).

Consumers' motion to remand was granted because there was a possibility that the consumers could prevail in state court against defendant local retailers, who sold them the lead-based paint that allegedly caused them injury, since a cause of action might not have accrued until a physician diagnosed the problem and its cause under the applicable statute of limitations, Miss. Code Ann. § 15-1-49, and therefore, the local retailers were not fraudulently joined and diversity was not complete. Jackson v. Phillips Bldg. Supply, 246 F. Supp. 2d 538, 2003 U.S. Dist. LEXIS 2544 (S.D. Miss. 2003).

Under Mississippi law, recipient of intrauterine device had single cause of action which accrued when she discovered her pelvic inflammatory disease and its source, notwithstanding her attempt to characterize her subsequently diagnosed infertility as separate injury for accrual purposes. Kemp v. G.D. Searle & Co., 103 F.3d 405, 1997 U.S. App. LEXIS 190 (5th Cir. Miss. 1997).

Under Mississippi law, cause of action for products liability accrues, and limitations period begins to run, when plaintiff can reasonably be held to have knowledge of injury or disease. Kemp v. G.D. Searle & Co., 103 F.3d 405, 1997 U.S. App. LEXIS 190 (5th Cir. Miss. 1997).

Under Mississippi law, general rule under accrual statute governing products liability claims is that time of discovery of injury is also time when statute of limitations begins to run. Kemp v. G.D. Searle & Co., 103 F.3d 405, 1997 U.S. App. LEXIS 190 (5th Cir. Miss. 1997).

Products liability action against manufacturer of drug stelazine was barred by 6-year statute of limitations in § 15-1-49, where last incidence of prescription of drug and onset of symptoms of side-effect condition occurred more than 6 years prior to commencement of suit; statute of limitations was not tolled because there was no evidence of fraudulent concealment of the plaintiff's condition. Lindley v. Hamilton, 883 F.2d 360, 1989 U.S. App. LEXIS 13873 (5th Cir. Miss. 1989).

This section governed the tort aspect of an action alleging that a television set malfunctioned, causing a fire that destroyed most of plaintiffs' home, but was inapplicable to their breach of implied warranties claim; plaintiffs' negligence and strict liability in tort claims were not time-barred under this section, even though the television set had been manufactured and sold more than six years before the action was commenced, where there was no showing that plaintiffs knew or should have known of the alleged defect prior to the fire and the statute of limitations thus did not begin to run until the date of the fire. Maly v. Magnavox Co., 460 F. Supp. 47, 1978 U.S. Dist. LEXIS 15359 (N.D. Miss. 1978).

Although it is the general rule that an action in tort accrues at the time of the wrongdoing or at the "time of delivery"; in a products liability action the 6-year-statute provided by § 722 accrues when the wrong is discovered or causes harm. Alabama G. S. R. Co. v. Allied Chemical Corp., 467 F.2d 679, 1972 U.S. App. LEXIS 7797 (5th Cir. Miss. 1972).

21. —Alienation of affections.

There was a genuine dispute of material fact about whether an alienation of affections case was time barred because it was unclear when a former wife's affections were alienated; although the couple filed for divorce on May 27, 2010, they moved back in together in July 2010 as the wife recovered from surgery, during which time they allegedly cohabitated and engaged in sexual relations. The trial court failed to consider the sixty-day waiting period before an irreconcilable differences divorce became final, as well as the public policy underlying the waiting period, which sought to foster reconciliation. Anderson v. Ladner, 198 So. 3d 381, 2016 Miss. App. LEXIS 15 (Miss. Ct. App.), cert. denied, 202 So. 3d 617, 2016 Miss. LEXIS 364 (Miss. 2016).

While a husband's claim for alienation of affection met the liberal notice-pleading requirements of Miss. R. Civ. P. 8(a), in that he set forth factual allegations respecting each material element of the claim, the claim was time-barred as it was not filed within the three-year period in Miss. Code Ann. § 15-1-49 (Rev. 2003). Almost six years had passed between the date alleged in the complaint and the date that the husband filed his complaint. Carter v. Reddix, 115 So. 3d 851, 2012 Miss. App. LEXIS 813 (Miss. Ct. App. 2012).

Summary judgment was properly granted to a paramour in a husband's claim for alienation of affection, arising from the paramour's affair with the husband's wife, as the suit was not filed within three years of the latest accrual date, which was when the affair ended, pursuant to Miss. Code Ann. § 15-1-49; further, the discovery rule under § 15-1-49(2) or continuing tort doctrine were not applicable, as a phone call between the paramour and the wife did not constitute a latent injury or continuing conduct that tolled the limitations period. Fulkerson v. Odom, 53 So. 3d 849, 2011 Miss. App. LEXIS 69 (Miss. Ct. App. 2011).

Remand was necessary in an alienation of affection case because the limited facts in the record made it impossible to determine if Mississippi or Tennessee law should have applied; the appellate court was also unable to determine when the cause of action accrued under the three-year statute of limitations in Miss. Code Ann. § 15-1-49 since the affair had been over for several years when the husband had discovered it, the wife continued to reside in the marital home during the affair, and she continued a relationship with her husband, including having two other children, after the affair ended. Hancock v. Watson, 962 So. 2d 627, 2007 Miss. App. LEXIS 7 (Miss. Ct. App.), cert. denied, 962 So. 2d 38, 2007 Miss. LEXIS 469 (Miss. 2007).

An action for alienation of affections was time-barred where (1) the claim accrued on November 4, 1994 when the husband, in open pursuit of a relationship with the defendant, moved out of the marital home and abandoned the marital relationship, and (2) the plaintiff filed her claim on December 2, 1997, approximately one month after the statute of limitations had run on the claim. Carr v. Carr, 784 So. 2d 227, 2000 Miss. App. LEXIS 496 (Miss. Ct. App. 2000).

Action for alienation of affections governed by 6-year statute. Brister v. Dunaway, 149 Miss. 5, 115 So. 36, 1927 Miss. LEXIS 105 (Miss. 1927).

22. —Actions for deceit.

Statute of limitations precluded a former client's claims against an attorney for fraud, breach of contract, and legal malpractice because the statute of limitations began to run when the client sent a letter to the attorney terminating the attorney's employment and on that same date received a copy of the employment contract which the client believed was altered. The complaint which the client filed with the Mississippi Bar did not toll the statute of limitations or require the client to exhaust administrative remedies before filing suit. Archer v. Creel, 217 So. 3d 690, 2016 Miss. App. LEXIS 600 (Miss. Ct. App. 2016), cert. denied, 216 So. 3d 1150, 2017 Miss. LEXIS 186 (Miss. 2017).

Where plaintiff borrowers alleged fraudulent and negligent inducement into purchasing credit insurance in connection with loans, but alleged no post-sale act concealing that arrangement subsequent to the loans, they were not entitled to tolling under Mississippi's fraudulent concealment statute, Miss. Code Ann. § 15-1-67, on the claims against defendant insurers, and all of the claims were time-barred under Miss. Code Ann. § 15-1-49(1) because the last loan was dated September 15, 1999, and the action was not filed until December 28, 2002. Jones v. Life of the S. Ins. Corp., 2006 U.S. Dist. LEXIS 1414 (S.D. Miss. Jan. 4, 2006).

As all of plaintiffs' claims regarding credit life insurance appeared to be based on alleged misconduct that occurred during the formation of the insurance contracts, the statute of limitation began to run on the dates on which the various agreements were signed, all of which occurred more than three years prior to the filing of the suit, and were thus time-barred by Miss. Code Ann. § 15-1-49(1). Agnew v. Wash. Mut. Fin. Group, LLC, 244 F. Supp. 2d 672, 2003 U.S. Dist. LEXIS 7380 (N.D. Miss. 2003).

Trial court did not err in dismissing with prejudice a fraud and misrepresentation case against an insurer because the claim was barred by the six-year statute of limitations in Miss. Code Ann. § 722 (1972); the cause of action was not tolled by Miss. Code Ann. § 15-1-67 because the insurer did nothing to prevent two insureds from discovering their cause of action. Stephens v. Equitable Life Assur. Soc'y of the United States, 850 So. 2d 78, 2003 Miss. LEXIS 117 (Miss. 2003).

The six-year statute of limitation applies to an action for deceit for a false representation as to the acreage or the number of feet in a tract of land sold. Dunn v. Dent, 169 Miss. 574, 153 So. 798, 1934 Miss. LEXIS 73 (Miss. 1934).

In suit by purchaser for false representations as to acreage of tract sold, evidence failed to establish that vendor fraudulently concealed false representations after sale, and hence suit begun more than seven years after sale was barred. Dunn v. Dent, 169 Miss. 574, 153 So. 798, 1934 Miss. LEXIS 73 (Miss. 1934).

23. —Damage to realty.

As the chancellor found that a homeowner's widow first learned of a sinkhole that damaged their property less than three years before suit was filed, the chancellor did not manifestly err in finding that the complaint was timely filed under the discovery rule. Borne v. Estate of T. L. Carraway, 118 So. 3d 571, 2013 Miss. LEXIS 373 (Miss. 2013).

Where the homeowners knew as of July 1999 that there was an injury to their property and that the association was responsible for at least part of the injury, but did not sue the association until September 2002, their claim was barred by the three-year statute of limitation in Miss. Code Ann. § 15-1-49. Sims v. Bear Creek Water Ass'n, 923 So. 2d 230, 2005 Miss. App. LEXIS 580 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 149 (Miss. 2006).

Person who purchased property subsequent to the construction of a pipeline under a right-of-way agreement would not be entitled, under Mississippi law, to recover any damage for injury to the land by reason of the construction, with the exception that if the pipeline was constructed negligently, and as a proximate result of such negligent construction, such person suffered injuries after the purchase of the property, recovery could be had to the extent that the injury flowing from such negligent construction was not permanent but continuing, damages for which would not be barred by the statute of limitations. Michigan Wisconsin Pipeline Co. v. Moore, 319 F. Supp. 753, 1970 U.S. Dist. LEXIS 9306 (N.D. Miss. 1970).

Where some of the heirs had entered upon the land in 1942, tore down the house thereon and removed it from the tract of land owned by them, cut some of the timber and pulp wood from the land, which was hauled away and sold, the claim for the removal of the house and for cutting of the timber and pulp wood was barred by the statute of limitations. London v. Braxton, 233 Miss. 514, 102 So. 2d 683, 1953 Miss. LEXIS 713 (Miss. 1953).

Action for wrongful use and occupation of a river bank by a railroad company in transferring its trains across the river is governed by the six-year statute of limitations and not the three-year statute. Louisiana & M. R. T. Co. v. Long, 159 Miss. 654, 131 So. 84, 1930 Miss. LEXIS 358 (Miss. 1930).

Six-year statute applies to action for damages to real property caused by construction of railroad side track. Romano v. Yazoo & M. V. R. Co., 87 Miss. 721, 40 So. 150, 1905 Miss. LEXIS 182 (Miss. 1905).

24. —Malpractice.

Statute of limitations precluded a former client's claims against an attorney for fraud, breach of contract, and legal malpractice because the statute of limitations began to run when the client sent a letter to the attorney terminating the attorney's employment and on that same date received a copy of the employment contract which the client believed was altered. The complaint which the client filed with the Mississippi Bar did not toll the statute of limitations or require the client to exhaust administrative remedies before filing suit. Archer v. Creel, 217 So. 3d 690, 2016 Miss. App. LEXIS 600 (Miss. Ct. App. 2016), cert. denied, 216 So. 3d 1150, 2017 Miss. LEXIS 186 (Miss. 2017).

Legal malpractice claim based on representation before the Mississippi State Tax Commission was not time barred because, pursuant to the discovery rule, a one-sentence notification of a partial loss/partial win at an intermediate stage of an ongoing administrative appeal did not provide sufficient notice of possible malpractice. Donovan v. Burwell, 199 So. 3d 725, 2016 Miss. App. LEXIS 10 (Miss. Ct. App.), cert. denied, 203 So. 3d 596, 2016 Miss. LEXIS 389 (Miss. 2016).

Although plaintiff argued the statute of limitations did not commence until November 26, 2009, and, therefore, her medical malpractice lawsuit, which was filed on November 14, 2011, was timely, plaintiff knew or, by the exercise of reasonable diligence, should have known when she went to a hospital in August 2009, following her surgery the previous month, that there was a problem with the surgery, if indeed there was one, and plaintiff did not present any argument as to when the statute of limitations began to run. Therefore, the circuit court did not err in granting summary judgment in favor of defendants. Vick v. Brandon HMA, LLC, 167 So. 3d 259, 2015 Miss. App. LEXIS 318 (Miss. Ct. App. 2015).

Circuit court properly dismissed a former client's legal malpractice complaint as time-barred because any ill effects he experienced during the three years of litigation against his former attorney stemmed from his own failure to have him removed from the case where the former client could not waive his right to have the attorney disqualified and at the same time rely on the attorney's continued adverse representation to toll the statute of limitations under the continuing tort doctrine, the attorney's adverse representation was one overall breach, not a string of breaches each creating a separate cause of action, and the client waived his right to have the attorney disqualified by continuing with the litigation. Thomas v. Cook, 170 So. 3d 1254, 2015 Miss. App. LEXIS 394 (Miss. Ct. App. 2015).

Circuit court properly granted the attorneys summary judgment on a client's claim that he was not paid an agreed-to settlement amount where the client filed the claim more than three years after receiving the settlement check, he admitted that he was immediately aware of the shortfall, and thus, he failed to prove fraudulent concealment for purposes of tolling the limitations period. Pickett v. Gallagher, 159 So. 3d 587, 2014 Miss. App. LEXIS 444 (Miss. Ct. App. 2014), cert. denied, 158 So. 3d 1153, 2015 Miss. LEXIS 138 (Miss. 2015), cert. denied, — U.S. —, 136 S. Ct. 501, 193 L. Ed. 2d 399, 2015 U.S. LEXIS 7249 (U.S. 2015).

Although an oil company's property became infested with alligators well outside the three-year limitations period for a private nuisance claim filed by the adjoining owners, a fact issue as to whether the infestation should have been discovered prior to the owners' purchase of their property precluded summary judgment where: (1) the owners' property was overgrown; (2) undergrowth could have concealed the alligators; and (3) alligator infestation was an unusual injury that did not put the owners' on notice by an occasional sighting. Christmas v. Exxon Mobil Corp., 138 So. 3d 168, 2013 Miss. App. LEXIS 301 (Miss. Ct. App. 2013), rev'd, 138 So. 3d 123, 2014 Miss. LEXIS 244 (Miss. 2014).

Trial court determined that the stockholder knew or should have known of the attorney's alleged legal malpractice on March 10, 2005, when he signed the 2005 buyout agreement. Thus, the three-year limitations period under Miss. Code Ann. § 15-1-49 for filing a legal malpractice claim had expired before the stockholder's complaint was filed on May 13, 2009; therefore, the trial court correctly found that the action was time-barred and correctly granted the attorney's motion for summary judgment. Evans v. Howell, 121 So. 3d 919, 2013 Miss. App. LEXIS 125 (Miss. Ct. App.), cert. denied, 121 So. 3d 918, 2013 Miss. LEXIS 478 (Miss. 2013).

Where a client hired a law firm to pursue a medical malpractice claim on her behalf, where the law firm failed to effect service of process upon the health care provider and the suit was dismissed for lack of prosecution, where the client filed a legal malpractice claim against the law firm, and where the trial court granted summary judgment in favor of the law firm after finding that the client's lawsuit was not timely filed pursuant to the three-year statute of limitations under Miss. Code Ann. § 15-1-49, the reviewing court held that the evidence submitted on summary judgment raised a genuine issue of material fact regarding when the client knew or, with reasonable diligence, could have discovered the alleged legal malpractice. The law firm failed to communicate the lack of service, and the client presented evidence that she lacked actual knowledge of the alleged malpractice prior to her new counsel's review of the case file; as such, summary judgment was improper. Bennett v. Hill-Boren P.C., 52 So. 3d 364, 2011 Miss. LEXIS 63 (Miss. 2011).

Mississippi does not follow the continuous representation rule. Rather, the discovery rule is the proper test for deciding when the statute of limitations for a legal malpractice action begins to run. Bennett v. Hill-Boren P.C., 52 So. 3d 364, 2011 Miss. LEXIS 63 (Miss. 2011).

Summary judgment was properly granted to the attorney on the client's legal malpractice claim as it was time barred, Miss. Code Ann. § 15-1-49; the seventy-one-day delay in raising the statute of limitations defense was not a substantial and unreasonable delay, and the client had a known injury as of May 23, 2002, and could pursue her claim without being directly told the attorney was negligent. Spann v. Diaz, 987 So. 2d 443, 2008 Miss. LEXIS 357 (Miss. 2008).

Where an employee killed co-workers after being referred to counseling by the employer and an employee assistance provider (EAP), the EAP was not entitled to summary judgment as to negligence claims because the statute of limitations for medical malpractice claims did not apply since the claims were for ordinary negligence, not medical malpractice; the residual three-year statute of limitations applied, and the suit was timely. Tanks v. NEAS, Inc., 519 F. Supp. 2d 645, 2007 U.S. Dist. LEXIS 70334 (S.D. Miss. 2007).

Although the statute of limitations was three years for a legal malpractice action, a client's first complaint tolled the statute of limitations even though that complaint was not properly served, and a second complaint was subsequently filed. Parmley v. Pringle, 976 So. 2d 422, 2007 Miss. App. LEXIS 488 (Miss. Ct. App. 2007).

Two of clients' malpractice claims against attorneys were barred by the statute of limitations, Miss. Code Ann. § 15-1-49; however, the trial court had to determine on remand whether the other clients knew or should have known of alleged wrongdoing prior to January 1, 2001, and if so, their claims would also be time barred. Channel v. Loyacono, 954 So. 2d 415, 2007 Miss. LEXIS 223 (Miss. 2007).

In medical negligence cases, courts must focus their inquiry on when a patient, exercising reasonable diligence, should have first discovered the negligence, rather than the injury; therefore, summary judgment was properly granted to a doctor's estate in a medical malpractice case based on the discovery rule under Miss. Code Ann. § 15-1-36 since the patient was aware of an injury arising out of the prescription of certain drugs after his discharge from a hospital in 2001, and this discovery rule was different than the latent injury focus in Miss. Code Ann. § 15-1-49. Sutherland v. Estate of Ritter, 959 So. 2d 1004, 2007 Miss. LEXIS 226 (Miss. 2007).

In a legal malpractice case brought by a client against his attorney, the trial court properly applied the three-year statute of limitations under Miss. Code Ann. § 15-1-49; the statute of limitations began to run when the client became aware of the attorney's alleged misrepresentation, not when the client's conviction was invalidated. Stringer v. Lowe, 955 So. 2d 381, 2006 Miss. App. LEXIS 819 (Miss. Ct. App. 2006), cert. denied, 956 So. 2d 228, 2007 Miss. LEXIS 266 (Miss. 2007), cert. denied, 552 U.S. 860, 128 S. Ct. 143, 169 L. Ed. 2d 98, 2007 U.S. LEXIS 9354 (U.S. 2007).

Court properly dismissed a client's legal malpractice action as barred by the three-year statute of limitation because the client, who was incarcerated due to the attorney's failure to file an accounting, should have known of his deficient performance when she terminated him. Champluvier v. Beck, 909 So. 2d 1061, 2004 Miss. LEXIS 1457 (Miss. 2004).

Grant of summary judgment in favor of the attorneys in the client's legal malpractice action was proper where the three-year statute of limitations began to run in 1995; thus, the 2001 action was time-barred. Hymes v. McIlwain, 856 So. 2d 416, 2003 Miss. App. LEXIS 250 (Miss. Ct. App. 2003), overruled, Trigg v. Farese, 266 So. 3d 611, 2018 Miss. LEXIS 469 (Miss. 2018).

The six-year statute of limitations contained in this section does not apply to an action for medical malpractice; instead, the two-year statute of limitations contained in § 15-1-36 applies to such an action. Goleman v. Orgler, 771 So. 2d 374, 2000 Miss. App. LEXIS 253 (Miss. Ct. App. 2000).

In a legal malpractice action arising from an attorney's failure to record a trust, the attorney's continued representation of the client on matters other than the failed trust did not toll the running of the limitations period. Stevens v. Lake, 615 So. 2d 1177, 1993 Miss. LEXIS 73 (Miss. 1993).

The discovery rule applies in medical malpractice cases involving latent injuries and diseases. Williams v. Kilgore, 618 So. 2d 51, 1992 Miss. LEXIS 787 (Miss. 1992).

A cause of action for medical malpractice involving negligence which occurred in 1964 but was not discovered until 1985 was not time-barred by either § 15-1-36 or § 15-1-49 where the complaint was filed within 2 years of the discovery of the injury. Williams v. Kilgore, 618 So. 2d 51, 1992 Miss. LEXIS 787 (Miss. 1992).

The 2-year statute of limitations set forth in § 15-1-36, rather than the general 6-year limitation period of § 15-1-49, applied to a medical malpractice action against a nurse and a company that supplied nursing personnel, where the company's sole basis for liability was the fact that it was the nurse's employer; since § 15-1-36 specifically names nurses among those covered and the company's liability was predicated solely upon the doctrine of respondeat superior, the bar of the suit against the nurse likewise barred the action as to the company. Under § 15-1-3, § 15-1-36 barred both the right of action against the nurse and the company and also barred any remedy against both parties. Lowery v. Statewide Healthcare Service, Inc., 585 So. 2d 778, 1991 Miss. LEXIS 651 (Miss. 1991).

Medical malpractice action was not barred by statute of limitations where alleged negligent act occurred on June 28, 1974, foreign object was discovered in lining of patient's heart on June 21, 1982, and action was filed on June 14, 1984, because enactment of specific statute of limitations, § 15-1-36, dealing with malpractice tort claims, controlled over general statute, § 15-1-49; specific statute defined date of accrual of action as being date of alleged act, omission, or neglect, or date injury would or with reasonable diligence might have been first known or discovered, and provided that it applied to claims which accrued on or after July 1, 1976; fact that different definition of accrual may have been accepted with respect to general 6-year statute of limitations was beside point, because that definition had been superseded by specific statute of limitations. Kilgore v. Barnes, 508 So. 2d 1042, 1987 Miss. LEXIS 2448 (Miss. 1987).

In legal malpractice action against attorney who delayed in asserting federal tort claim until relevant limitations period had expired, fact that claim arose by virtue of oral contract securing attorney's services did not preclude application of 6 year statute of limitations governing torts, rather than 3 year statute of limitations governing contracts. Hickox ex rel. Hickox v. Holleman, 502 So. 2d 626, 1987 Miss. LEXIS 2282 (Miss. 1987).

Interlocutory appeal from the circuit court would be granted to determine whether the 6 year statute of limitations provided by Mississippi Code § 15-1-49, or the medical malpractice statute of limitations found in Mississippi Code § 15-1-36, applies to a medical malpractice action in which plaintiff alleged injury resulting from defendants' negligence in leaving a surgical needle in his heart during surgery performed on June 28, 1974, but of which plaintiff was unaware until June 21, 1982. Kilgore v. Barnes, 490 So. 2d 895, 1986 Miss. LEXIS 2500 (Miss. 1986).

In a malpractice action against an attorney resulting from his issuance of defective title certificates, the six-year general statute of limitations under § 15-1-49 was applicable, rather than the three-year statute of limitations governing actions on unwritten contracts under § 15-1-29. United Cos. Mortg., Inc. v. Jones, 465 So. 2d 1083, 1985 Miss. LEXIS 1988 (Miss. 1985).

Action against attorney for negligence in preparing title certificate is governed by 6 year statute of limitations (§ 15-1-49), not by 3 year statute (§ 15-1-29). United Cos. Mortg., Inc. v. Jones, 465 So. 2d 1083, 1985 Miss. LEXIS 1988 (Miss. 1985).

In a legal malpractice action the six-year statute of limitations provided in § 15-1-49 governed the action rather than § 15-1-29, where plaintiffs clients' declaration charging that the attorney negligently conducted the legal representation of the plaintiffs by failing to list certain priority claims that could have been satisfied from the assets of the bankruptcy estate sounded in tort, regardless of the oral contract under which the attorney undertook legal representation of the plaintiffs. Hutchinson v. Smith, 417 So. 2d 926, 1982 Miss. LEXIS 2098 (Miss. 1982).

A medical malpractice action based on the theory of lack of informed consent, was in tort and subject to the general six-year statute of limitations as set out in Code 1942, § 722, rather than the one-year statute of limitations on assault and battery claims as set out in Code 1942, § 732. Ross v. Hodges, 234 So. 2d 905, 1970 Miss. LEXIS 1425 (Miss. 1970).

25. Causes or rights accruing in foreign state.

Suit was not timely filed under Miss. Code Ann. § 15-1-49(1) because (1) that limitations period only applied if no other limitation period applied, and (2) Miss. Code Ann. § 15-1-65 prescribed a limitation period by applying the limitations period from the jurisdiction where the cause of action accrued. N. Am. Midway Entm't, LLC v. Murray, 200 So. 3d 437, 2016 Miss. LEXIS 386 (Miss. 2016).

Mississippi's 6-year statute of limitations for tort actions, § 15-1-49, applied to a Mississippi lawsuit even though the tort occurred in Louisiana since Mississippi applies its own procedural law to actions filed in Mississippi courts. Ford v. State Farm Ins. Co., 625 So. 2d 792, 1993 Miss. LEXIS 449 (Miss. 1993).

Mississippi's general statute of limitations is considered procedural and therefore applies to actions in Mississippi arising under laws of another jurisdiction. Bastoe v. Sterling Drug, Inc., 683 F. Supp. 586, 1988 U.S. Dist. LEXIS 3064 (S.D. Miss. 1988).

The Mississippi statute of limitations, § 15-1-49, applied to an action arising from a motor vehicle accident in Louisiana brought by Louisiana residents against a corporation organized under the laws of Mississippi but with its principal place of business in Louisiana. Lee v. Swain Bldg. Materials Co., 529 So. 2d 188, 1988 Miss. LEXIS 363 (Miss. 1988).

The Mississippi general statute of limitations was applicable in a diversity action for wrongful death arising out of an automobile accident in Tennessee. Cummings v. Cowan, 390 F. Supp. 1251, 1975 U.S. Dist. LEXIS 13512 (N.D. Miss. 1975).

In a wrongful death action arising out of a plane crash in Belgium, the statute of limitations of Belgium, which had run prior to the bringing of the action, was held to be substantive law and thus applicable to the action brought in Mississippi. Ramsay v. Boeing Co., 432 F.2d 592, 1970 U.S. App. LEXIS 7563 (5th Cir. Miss. 1970).

Since the lex fori governs as to the remedy for the enforcement of a right in Mississippi under a contract executed in another state, recovery against the indorser of a note executed and delivered in Alabama more than six years prior to the action on the note was barred by the six-year statute of limitations of Mississippi, notwithstanding partial payment had been made during the six-year period, the Alabama six-year statute not being thereby rendered applicable. Montgomery v. Yarbrough, 192 Miss. 667, 6 So. 2d 925 (Miss. 1942).

Where on former appeals, terminating in a decision by the Federal Supreme Court, the point raised by demurrer to insurer's plea involved the question whether a provision in a fidelity bond requiring any claim thereunder to be made within 15 months after the termination of the suretyship, was subject to the law of Tennessee where the contract was made at a time when the insured was then located in Tennessee, or subject to the laws of Mississippi, to which insured had removed and where the defalcation occurred, and resulted in a determination that the laws of Tennessee governed, such determination did not preclude subsequent litigation as to the effect of such provision under Tennessee decisions as being a condition precedent to liability of the insurer or merely a postponement of the right to sue. Hartford Acci. & Indem. Co. v. Delta & Pine Land Co., 189 Miss. 496, 195 So. 667, 1940 Miss. LEXIS 100 (Miss.), cert. denied, 311 U.S. 610, 61 S. Ct. 25, 85 L. Ed. 387 (U.S. 1940).

Mississippi six-year statute, not three-year statute, applied to action for use and occupation of river bank controlled by Louisiana law. Louisiana & M. R. T. Co. v. Long, 159 Miss. 654, 131 So. 84, 1930 Miss. LEXIS 358 (Miss. 1930).

Statute [Code 1942, § 722] applies to right of action accruing in foreign state. Fisher v. Burk, 123 Miss. 781, 86 So. 300, 1920 Miss. LEXIS 80 (Miss. 1920).

Mississippi statute of limitations controls in action in this state on note executed in Canada. Philp v. Hicks, 112 Miss. 581, 73 So. 610, 1916 Miss. LEXIS 150 (Miss. 1916).

The statute bars a note made in another state where the limit is ten years, although both maker and payee resided there at the time and the maker did not become a resident of this state until nearly six years after maturity. Wright v. Mordaunt, 77 Miss. 537, 27 So. 640, 1899 Miss. LEXIS 97 (Miss. 1899).

26. Persons affected.

Where bonds were purchased by a testator in 1916 and were to become due in 1936 and they were later bequeathed by the testator who died in 1939, without specific designation to his wife, and the wife died in 1948, leaving all her property to legatee, and neither the wife nor the legatee were aware of the existence of the bonds, an action by the legatee in 1949 was barred by the six-year statute of limitations. Mitchell v. Magee, 51 So. 2d 198 (Miss. 1951).

The statute of limitations bars a wife's causes of action against her husband as if they were unmarried. Wyatt v. Wyatt, 81 Miss. 219, 32 So. 317, 1902 Miss. LEXIS 111 (Miss. 1902).

27. Running of limitation period, generally.

Chancery court did not abuse its discretion in denying appellant's motion to amend because the motion was barred by the statute of limitation; appellant's damages accrued in 2009, and the statute of limitations on the claim ran in 2012. RSL Funding, LLC v. Saucier (In re Transfer of Structured Settlement Payment Rights by Benny Ray Saucier), 207 So. 3d 689, 2016 Miss. App. LEXIS 801 (Miss. Ct. App. 2016).

In a dispute regarding misrepresentation of insurance coverage, the three-year statute of limitations in Miss. Code Ann. § 15-1-49 began to run when the insured received notice that his personal automobile claim, which arose from a serious collision that his son had while driving the insured's vehicle for personal reasons, was denied; thus, summary judgment should have been granted to the insurers as the insured did not sue until about six years later. Oaks v. Sellers, 953 So. 2d 1077, 2007 Miss. LEXIS 209 (Miss. 2007).

Bank's claims against an insurer, including fraudulent inducement in the purchase of a policy, were dismissed as time-barred under Miss. Code § 15-1-49, because even if the bank had not examined the policy when it was purchased, or if its terms were not clear, the bank was put on notice that the single premium payment may not have been sufficient to keep the policy in force; neither the oral representations from the insurer's agent that a single payment would maintain the policy, the express assurances that payments were not due, nor the zero balance statements over six years constituted concealment to save the case pursuant to Miss. Code § 15-1-67. Peoples Bank Asset & Trust Mgmt. Dep't v. Great W. Life & Annuity Ins. Co., 2005 U.S. Dist. LEXIS 16752 (S.D. Miss. Feb. 7, 2005).

Even if the insured had negligence claims, which were subject to the three-year statute of limitations found in Miss. Code Ann. § 15-1-49, her claims would still be barred; the insured's claim began to run at a time when she should reasonably have been aware that a tort had been committed; that day was March 11, 2000, when the investigator was arrested at the insured's place of employment, and her court action was not filed until April 10, 2003, more than three years after she should have been aware of the existence of a claim. Lynch v. Liberty Mut. Ins. Co., 909 So. 2d 1289, 2005 Miss. App. LEXIS 137 (Miss. Ct. App. 2005).

There are two factors that must be proven before the provisions of Miss. Code Ann. § 15-1-67 can operate to toll the statute of limitations for a cause of action: the plaintiff must prove that (1) some affirmative act or conduct was done and prevented discovery of a claim; and (2) due diligence was performed on their part to discover it; and therefore an insured's action against his agent accrued upon the sale of the policies where he performed no additional act thereafter. Williams v. Union Nat'l Life Ins. Co., 2003 U.S. Dist. LEXIS 25159 (N.D. Miss. July 24, 2003).

Appellant tax sale purchaser raised the statute of limitations in his appeal of the lower court's decision that the tax sale of the landowners' property was void due to the lack of notice therefor; however, this issue was not raised as an affirmative defense, and was therefor not properly before the appellate court. Alexander v. Womack, 857 So. 2d 59, 2003 Miss. LEXIS 528 (Miss. 2003).

Borrower's misrepresentation and negligence claims against a credit insurer's employee were time-barred and the statute was not tolled under Miss. Code Ann. § 15-1-67 because the borrower received, but did not read, copies of all pertinent documents, which clearly stated that credit insurance was optional. Bell v. Am. Gen. Fin., Inc., 267 F. Supp. 2d 582, 2003 U.S. Dist. LEXIS 10718 (S.D. Miss. 2003).

Running of statute of limitations against tortfeasor does not bar claim against insurer. Bailey v. State Farm Fire & Casualty Ins. Co., 621 F. Supp. 1016, 1985 U.S. Dist. LEXIS 14082 (S.D. Miss. 1985).

This section is applicable to strict products liability in tort actions and, in personal injury actions, the statute begins to run from the time that injuries are sustained. Ford Motor Co. v. Broadway, 374 So. 2d 207, 1979 Miss. LEXIS 2224 (Miss. 1979).

It is well settled law in Mississippi that a cause of action begins to run from the time of injury and not from the time of its discovery unless the running of the statute of limitations is tolled by the operation of Code 1942, § 742 (fraudulent concealment of a cause of action). Wilson v. Retail Credit Co., 325 F. Supp. 460, 1971 U.S. Dist. LEXIS 14248 (S.D. Miss. 1971), aff'd, 457 F.2d 1406, 1972 U.S. App. LEXIS 10066 (5th Cir. Miss. 1972).

If no action on an anticipatory breach is brought before the time fixed by the contract for the beginning of the performance by the party who has committed such a breach, the period of statute of limitations begins to run only from the time so fixed by the contract. Old Ladies Home Ass'n v. Hall, 212 Miss. 67, 52 So. 2d 650, 1951 Miss. LEXIS 428 (Miss. 1951).

An immediate action based upon an anticipatory breach is a different cause of action from that based on the nonperformance at the contract time, and limitation period does not begin to run upon nonperformance of contractual duty until the cause of action accrues and they duty of performance continues in spite of repudiation. Old Ladies Home Ass'n v. Hall, 212 Miss. 67, 52 So. 2d 650, 1951 Miss. LEXIS 428 (Miss. 1951).

The general rule allows the injured promisee, if he elects after breach of the contract to keep it alive, to compute the statute of limitations, not from the time of the breach by anticipatory repudiation, but from the time when ultimate payment of performance was promised, the death of the promisor. Old Ladies Home Ass'n v. Hall, 212 Miss. 67, 52 So. 2d 650, 1951 Miss. LEXIS 428 (Miss. 1951).

Mere mistake, accident or ignorance of one not under disability is not sufficient to suspend the statute of limitations. Mitchell v. Magee, 51 So. 2d 198 (Miss. 1951).

28. — Accrual of cause of action; miscellaneous.

Worker's claim for injury caused by exposure to respirable crystalline silica while working as a sandblaster was time-barred, under the discovery rule, because the worker had knowledge of a potential injury years earlier when doctors diagnosed the worker's bronchitis and other lung disease, the worker submitted medical records, noting findings consistent with "pneumoconiosis (such as silicosis . . .)", to the Social Security Administration for disability, and the worker's parent and friend both worked in sandblasting and filed silicosis suits. F & S Sand, Inc. v. Stringfellow, 265 So. 3d 170, 2019 Miss. LEXIS 85 (Miss. 2019).

University graduate's contract and tort related claims against the university from which the graduate obtained a master's degree were barred by the three-year statute of limitations because any alleged cause of action which the graduate may have had against the university accrued, at the very latest, upon graduation, but the graduate waited until eleven years later to file the complaint against the university and failed to show that the statute of limitations was tolled. McGee v. Jackson State Univ., — So. 3d —, 2019 Miss. App. LEXIS 362 (Miss. Ct. App. July 30, 2019).

Landowners' inverse condemnation claim against the State of Mississippi was not time-barred because the claim did not accrue until the landowners' land was actually taken. State v. Murphy, 202 So. 3d 1243, 2016 Miss. LEXIS 446 (Miss. 2016).

Claims by the co-conservators of their parent's person were barred by the applicable statutes of limitation because they should have discovered, by reasonable diligence, that a previously appointed conservator of the estate was misappropriating funds from the estate when the co-conservators - using due diligence - would have received an accounting and bank statements regarding their parent's estate, and would have by reasonable diligence discovered the injury. Benvenutti v. McAdams, 162 So. 3d 808, 2015 Miss. LEXIS 217 (Miss. 2015).

While a chancellor properly found that the relatives were entitled to a new trial, the chancellor erred in finding that a constructive trust existed because their agreement to provide money in exchange for the owner's promise of an interest in a landfill was nothing more than a contract and the relatives' breach of contract action was untimely. Barriffe v. Estate of Nelson, 153 So. 3d 613, 2014 Miss. LEXIS 492 (Miss. 2014).

Welder's products liability and failure to warn action, filed on November 14, 2005, against two manufacturers was time-barred pursuant to Miss. Code Ann. § 15-1-49 because the statute of limitations began to run in September 2002 when the welder knew of his Parkinsonism, rather than October 2005 when the welder was diagnosed with manganism; the welder's cause of action accrued upon the discovery of the injury, not the cause of the injury. Lincoln Elec. Co. v. McLemore, 54 So. 3d 833, 2010 Miss. LEXIS 639 (Miss. 2010).

Discovery rule is codified with respect to the three year statute of limitations at issue in the alienation of affection and negligent infliction of emotional distress claims at Miss. Code Ann. § 15-1-49(2), which provides that in all actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury. Bristow v. Baskerville, 2010 U.S. Dist. LEXIS 129131 (S.D. Miss. Dec. 6, 2010), vacated, 2011 U.S. Dist. LEXIS 41860 (S.D. Miss. Apr. 12, 2011).

Both parties agreed that the general, catch-all three year statute of limitations set forth in Miss. Code Ann. § 15-1-49 (Rev. 2003) should have applied in the case, and the appellate court found that the owner implicitly consented to the association renting out his unit because he never responded to the letters sent to him, and he never voiced his disapproval of the rentals at the board meetings, or at any other time prior to filing his complaint in the present action. Because the owner never objected to the rentals until he filed his complaint in January 2000, even though he knew that the association was entering his unit without his consent as early as 1993, the appellate court found no error in the chancellor's finding that the owner's continued-trespass claim was untimely. Robertson v. Chateau Legrand Prop. Owner's Ass'n, 39 So. 3d 931, 2009 Miss. App. LEXIS 724 (Miss. Ct. App. 2009).

Order granting summary judgment based on insured's claims against an insurer being time-barred under Miss. Code Ann. § 15-1-49 was reversed because the triggering event could not be pinpointed as matter of law, but rather posed a question of fact as to when a reasonable policy holder should have realized from the available information that the policy would not or was not performing as allegedly promised and that the so-called vanishing premiums were a fiction. Weathers v. Metro. Life Ins. Co., 14 So. 3d 688, 2009 Miss. LEXIS 305 (Miss. 2009).

Plaintiff employer's business tort and trade secret claims against defendant competitor, based on the employer's former employee, in violation of a non compete agreement, selling to his former customers, were time-barred under Miss. Code Ann. §§ 15-1-49, 75-26-13, because § 15-1-49(2)'s discovery rule did not toll the limitations period since the employer's representative testified that learning competing sellers' identities was not difficult. State Indus. Prods. Corp. v. Beta Tech. Inc., 575 F.3d 450, 2009 U.S. App. LEXIS 15135 (5th Cir. Miss. 2009).

For exhaustion of remedies purposes, a final order was not entered until an administrative law judge made a full resolution of a final decision because the parties in a worker's compensation dispute had reserved the issue of temporary and permanent disability for a hearing on the merits. Bullock v. AIU Ins. Co., 2008 Miss. LEXIS 221 (Miss. May 8, 2008), op. withdrawn, sub. op., 995 So. 2d 717, 2008 Miss. LEXIS 595 (Miss. 2008).

Plaintiff's personal injury claims against the manufacturers of products that allegedly contained asbestos accrued when plaintiff was diagnosed with asbestosis on May 21, 2002, and when plaintiff filed the complaint on May 19, 2005, the claims were timely under the three-year statute of limitations in Miss. Code Ann. § 15-1-49. Riley v. Ga. Pac. Corp., 2006 U.S. Dist. LEXIS 1440 (N.D. Miss.), dismissed, 2006 U.S. Dist. LEXIS 1623 (N.D. Miss. Jan. 5, 2006).

Worker's asbestosis claim against a corporation for whom he had made products was dismissed for failure to timely serve the complaint within 120 days under Miss. R. Civ. P. 4(h), which in turn caused the statute of limitations in Miss. Code Ann. § 15-1-49(1), (2), to resume running and expire, barring his claims under Fed.

R. Civ. P. 12(b)(6). Riley v. Ga. Pac. Corp., 2006 U.S. Dist. LEXIS 1623 (N.D. Miss.), dismissed, 2006 U.S. Dist. LEXIS 1625 (N.D. Miss. Jan. 5, 2006).

Grant of summary judgment in favor of a paint manufacturer in a minor and mother's action for injuries resulting from lead-based paint was proper pursuant to Miss. Code Ann. § 15-1-49(1) and (2) because the claims accrued no later than 1994 and the statute of limitations thus expired no later than 1997. Based on the facts, the mother knew categorically in 1993 that the minor had suffered excessive exposure to lead, but she did not file her claims until 2000. Pollard v. Sherwin-Williams Co., 955 So. 2d 859, 2005 Miss. App. LEXIS 622 (Miss. Ct. App. 2005), aff'd in part and rev'd in part, 955 So. 2d 764, 2007 Miss. LEXIS 31 (Miss. 2007).

Consumers' civil antitrust claims, which were filed in April 2003, were time barred under Miss. Code Ann. § 15-1-49(2) where (1) the information was placed in the public domain as early as October 7, 1998, with the publication of a newspaper article, (2) from and after that date, the dissemination of the information increased in an ever widening circle, and (3) when the information was placed in the public domain, the doctrine of fraudulent concealment ceased to be applicable. Carder v. BASF Corp., 919 So. 2d 258, 2005 Miss. App. LEXIS 448 (Miss. Ct. App. 2005).

Courts applying Mississippi law hold that the statute of limitations period for claims based on alleged misrepresentations begins to run upon the completion of the sale induced by such false representation or upon the consummation of the fraud or misrepresentation. Donald v. Pioneer Credit Co., 374 F. Supp. 2d 495, 2005 U.S. Dist. LEXIS 16865 (S.D. Miss. 2005).

Homeowners' claim for flood damages allegedly caused by contractor's negligent construction and county's negligent inspection of their home were barred by Miss. Code Ann. §§ 15-1-41 and 14-1-49(1) because their action accrued when they first occupied the home and when they first asked the county to remedy the drainage problems. Baldwin v. Holliman, 913 So. 2d 400, 2005 Miss. App. LEXIS 297 (Miss. Ct. App. 2005), overruled in part, Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Once someone who possesses uninsured motorist coverage knows, or reasonably should know, that the damages claimed to have been suffered exceed the limits of insurance available to the alleged tortfeasor, the cause of action against the uninsured motorist carrier has accrued, and it is at this point in time that a potential plaintiff has a legally enforceable claim against the uninsured motorist carrier. Jackson v. State Farm Mut. Auto. Ins. Co., 852 So. 2d 641, 2003 Miss. App. LEXIS 70 (Miss. Ct. App. 2003), rev'd, 880 So. 2d 336, 2004 Miss. LEXIS 1053 (Miss. 2004).

Under Mississippi law, cause of action does not accrue until injury occurs. Wheeler v. Magdovitz (In re Wheeler), 137 F.3d 299, 1998 U.S. App. LEXIS 6192 (5th Cir. Miss. 1998).

Suits on claims such as that asserted in instant case, brought by FDIC to recover amounts owed by daughter both individually and as guarantor of loans, are required to be filed within 6 years after cause of action accrued, and cause of action accrues when payor on note comes into breach, not when FDIC, as receiver for failed lender, acquired the right to sue on the note. FDIC v. Belli, 981 F.2d 838, 1993 U.S. App. LEXIS 1188 (5th Cir. Miss. 1993).

Bank's cause of action against company hired to monitor inventory of steel company, to whom bank made loan, did not accrue until bank discovered inventory shortage, as each time company submitted false inventory report to bank, separate but ongoing breach of agreement occurred. Merchants & Marine Bank v. Douglas-Guardian Warehouse Corp., 801 F.2d 742, 1986 U.S. App. LEXIS 31635 (5th Cir. Miss. 1986).

A cause of action for damages resulting from the closure of a portion of a frontage road by the state highway commission accrued at the time the road was closed and the six-year statute of limitations prescribed by Section 15-1-49 began to run at that time. Mississippi State Highway Com. v. Vaughey, 358 So. 2d 1307, 1978 Miss. LEXIS 2570 (Miss. 1978).

The rule is well settled in Mississippi that where a debt is payable in installments the statute of limitations begins to run as to each instalment from the time it becomes due and the creditor can recover only on those installments falling due within the statutory period. Meridian Production Credit Asso. v. Edwards, 231 So. 2d 806, 1970 Miss. LEXIS 1614 (Miss. 1970).

The dismissal by a former sheriff and tax collector of his action against the county for compensation for alleged services did not destroy the right of his assignee, who was to obtain a portion of any recovery, and since the assignee's right was dependent upon the right of his assignor, assignee's action should have been brought within six years from the date of the expiration of the term of office of the former sheriff and tax collector, and, where it was not, the claim was barred. Smith v. Copiah County, 232 Miss. 838, 100 So. 2d 614, 1958 Miss. LEXIS 337 (Miss. 1958).

In an action against the union for wrongful suspension and expulsion of member, where this suspension was by a letter mailed in Kansas but received in Mississippi, the cause of action accrued in Mississippi and was subject to the Mississippi statute of limitations. Lowry v. International Brotherhood of Boilermakers, etc., 220 F.2d 546, 1955 U.S. App. LEXIS 4494 (5th Cir. Miss. 1955).

Cause of action for suspension of the union accrued on reception of a letter suspending the plaintiff. Lowry v. International Brotherhood of Boilermakers, etc., 220 F.2d 546, 1955 U.S. App. LEXIS 4494 (5th Cir. Miss. 1955).

A cause of action for redemption of corporate stock pledged as collateral for indebtedness, and an accounting accrues at the time that the owner of the stock has knowledge of the claim of another to the stock. Hudson v. Belzoni Equipment Co., 203 Miss. 212, 33 So. 2d 796, 1948 Miss. LEXIS 252 (Miss. 1948).

29. — —Real property, deeds, etc.

Property owners' inverse condemnation action against a city was time-barred because each heavy rain that caused a city ditch to damage the owners' property was not a separate taking, as the taking began when the owners knew damage had occurred. City of Tupelo v. O'Callaghan, 208 So. 3d 556, 2017 Miss. LEXIS 19 (Miss. 2017).

Property owners' inverse condemnation action against a city was time-barred because (1) the language "without limitation or qualification" in an opinion interpreting Miss. Const. art. 3, § 17 only applied to the type of damage, (2) no Mississippi authority held otherwise, so no constitutional rights were violated or materially impaired, and (3) the cause of action accrued upon discovering an injury, not the injury's cause. City of Tupelo v. O'Callaghan, 208 So. 3d 556, 2017 Miss. LEXIS 19 (Miss. 2017).

Buyers were without any cause of action until they suffered damages and the record was devoid of any proof that the buyers suffered actual damages prior to the date of closing when they purchased the home; the trial court erred in finding that the statute of limitations accrued prior to the date of closing. Fletcher v. Lyles, 999 So. 2d 1271, 2009 Miss. LEXIS 7 (Miss. 2009).

An action alleging that the Federal Deposit Insurance Corporation (FDIC) sold, for its own profit, lands held pursuant to two deeds of trust that the FDIC had previously sold to the plaintiff, was barred by the statute of limitations where the sale occurred more than three years prior to the commencement of the action, notwithstanding the assertion that the plaintiff did not receive actual notice of the sale until more than three years after it occurred, since the recordation of the sale provided the plaintiff with constructive notice of the sale. Commercial Servs. of Perry, Inc. v. FDIC, 199 F.3d 778, 2000 U.S. App. LEXIS 575 (5th Cir. Miss. 2000).

Landowner's claim that county unconstitutionally took private road for public use through its activity in working on roadway accrued at time county began performing maintenance work on road; maintenance work did or should have put landowner on notice that county was claiming road as public road. Taylor v. County of Copiah, 937 F. Supp. 573, 1994 U.S. Dist. LEXIS 20977 (S.D. Miss. 1994), aff'd, 51 F.3d 1042, 1995 U.S. App. LEXIS 8212 (5th Cir. Miss. 1995).

Landowner's claim that county unconstitutionally took fee simple interest in eight feet of land joining public road instead of right of way easement as landowner intended to grant accrued, if at all, when landowner executed warranty deed to county and deed was filed in chancery clerk's office. Taylor v. County of Copiah, 937 F. Supp. 573, 1994 U.S. Dist. LEXIS 20977 (S.D. Miss. 1994), aff'd, 51 F.3d 1042, 1995 U.S. App. LEXIS 8212 (5th Cir. Miss. 1995).

Unconstitutional taking of abandoned railroad right of way that landowner believed he owned, allegedly caused by county land surveyor's survey of 1.5 acres, accrued, if at all, when survey was conducted for third parties or when deed to third parties was filed. Taylor v. County of Copiah, 937 F. Supp. 573, 1994 U.S. Dist. LEXIS 20977 (S.D. Miss. 1994), aff'd, 51 F.3d 1042, 1995 U.S. App. LEXIS 8212 (5th Cir. Miss. 1995).

An action in subrogation filed by a credit association which had purchased land under a foreclosure sale under its second deed of trust against the successors in title in January, 1967, to recover the amount which it had paid to the beneficiary of the first deed of trust in June of 1961, in payment of a delinquent payment owed to the beneficiary of the first trust deed by the grantor who had executed the deeds of trusts, was barred by the six-year statute of limitations where the delinquent payment had been due in January of 1961, since the plaintiff credit association acquired no greater rights than those of its subrogor so that when the debt became barred, the plaintiff's right to enforce its remedy in equity on the deed of trust was likewise barred. Meridian Production Credit Asso. v. Edwards, 231 So. 2d 806, 1970 Miss. LEXIS 1614 (Miss. 1970).

Right of mortgagee, furnishing money to heirs, part of which was used to discharge ancestor's trust deeds, to be subrogated to such prior incumbrances as to heirs not signing trust deed, accrued, as regards running of limitations on payment of debt secured by such prior trust deeds. Burton v. John Hancock Mut. Life Ins. Co., 171 Miss. 596, 157 So. 525, 158 So. 474, 1934 Miss. LEXIS 243 (Miss. 1934).

A purchaser's right of action for deceit based upon false representations as to the acreage or the number of feet in a tract of land sold accrues upon the completion of the sale induced by such false representation, or upon the consummation of the fraud, and will be barred if suit is not filed within six years thereafter, in the absence of concealment of the fraud. Dunn v. Dent, 169 Miss. 574, 153 So. 798, 1934 Miss. LEXIS 73 (Miss. 1934).

Where a second deed is made to correct first deed, six-year statute of limitations against action on warranty begins to run from the date of the second deed. Wade v. Barlow, 99 Miss. 33, 54 So. 662, 1910 Miss. LEXIS 10 (Miss. 1910).

Where one conveys land owned by the United States and warrants the title, the covenant is broken when made, and the right of action accrues at once. Pevey v. Jones, 71 Miss. 647, 16 So. 252, 1893 Miss. LEXIS 72 (Miss. 1893).

The right of action on his covenant of warranty of a vendee of uncultivated land who acquires and enjoys a mixed possession along with the holder of a paramount title does not accrue until there is an interruption of his enjoyment of such possession. Watkins v. Gregory, 69 Miss. 469, 13 So. 696, 1891 Miss. LEXIS 145 (Miss. 1891).

30. — — Insurance.

Circuit court erred in denying an insurance agent's motion for summary judgment because the insured's claims were barred by the general three-year statute of limitations where the insured did not assert his claims for more than three years after he learned that the agent had failed to procure a replacement policy. McMorris v. Tally, 163 So. 3d 289, 2015 Miss. LEXIS 231 (Miss. 2015).

Circuit court properly granted an employer's insurer summary judgment in an employee's action alleging breach of contract and bad-faith refusal to pay his claim because there was no genuine issue of material fact that the complaint was time-barred; any claim the employee had to recover for his injury on the employer's farm accrued when he was injured on January 21, 2008, and thus, his complaint, which was filed on October 1, 2012, was time-barred. Ferguson v. Miss. Farm Bureau Cas. Ins. Co., 147 So. 3d 374, 2014

Miss. App. LEXIS 492 (Miss. Ct. App. 2014).

In an action involving ambiguous universal life insurance policies, a genuine issue of material fact existed as to when an alleged fraud was consummated on the insureds and, therefore, when the statute of limitations, pursuant to Miss. Code Ann. § 15-1-49(2), began to run. Hicks v. N. Am. Co. for Life & Health Ins., 47 So. 3d 181, 2010 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 49 So. 3d 1139, 2010 Miss. LEXIS 588 (Miss. 2010).

In a case in which a bonding company moved for summary judgment, arguing that an entertainment company's complaint for breach of contract and bad faith denial of its claim was untimely, that argument failed. While both parties agreed the applicable limitation period was the three years provided for in Miss. Code Ann. § 15-1-49, the entertainment company's claim did not accrue until after its claim had been denied, not, as the bonding company argued, when the entertainment company first had notice of the construction defects. C & I Entm't, LLC v. Fid. & Deposit Co. of Md., 2008 U.S. Dist. LEXIS 89905 (N.D. Miss. Oct. 28, 2008).

Summary judgment was properly awarded to an insurer in an insured's suit for fraud, breach of contract, and negligent supervision because the insured's action was time-barred; the three-year statute of limitations began to run after the insured read the life insurance policy and expressed concern over its provisions. Weathers v. Metro. Life Ins. Co., 14 So. 3d 732, 2008 Miss. App. LEXIS 426 (Miss. Ct. App. 2008), rev'd, 14 So. 3d 688, 2009 Miss. LEXIS 305 (Miss. 2009).

In a dispute between an insured and an insurer, a trial court erred in granting summary judgment for the insurer because the statute of limitations had not run; the insured filed suit within two years of discovering his premiums on his policy had increased. Pate v. Conseco Life Ins. Co., 971 So. 2d 593, 2008 Miss. LEXIS 15 (Miss. 2008).

Complaint by a Mississippi resident against an insurer arising out of uninsured motorist provisions of a policy was properly dismissed as time barred; the original complaint was properly refused by the circuit court clerk because it was signed by a Louisiana attorney who was not licensed to practice in Mississippi, and who had not been admitted pro hac vice. Mitchell v. Progressive Ins. Co., 965 So. 2d 679, 2007 Miss. LEXIS 542 (Miss. 2007).

Where an insured alleged that an insurance agent misrepresented that a policy's annual premium payments would "vanish" after eight out-of-pocket payments, the insured had been put on notice of a possible misrepresentation in 1993 when the first of several additional payment notices was received, so a cause of action for fraudulent concealment accrued no later than 1993. Wilbourn v. Equitable Life Assur. Soc'y of the United States, 998 So. 2d 439, 2007 Miss. App. LEXIS 501 (Miss. Ct. App. 2007), rev'd, 998 So. 2d 430, 2008 Miss. LEXIS 602 (Miss. 2008).

Since the homeowners' claims against an insurance agent were time-barred pursuant to Miss. Code Ann. § 15-1-49 and the homeowners had not shown that they were not entitled to the benefits of tolling under Miss. Code Ann. § 15-1-67, the insurance agent was fraudulently joined since the homeowners had no possibility of recovery against the agent; the homeowners' motion to remand the case was denied. Mendrop v. Shelter Mut. Ins. Co., 2006 U.S. Dist. LEXIS 54783 (N.D. Miss. Aug. 4, 2006).

In light of a claim for wrongful denial of benefits, the applicable statute of limitations is Mississippi's catch-all statute of limitations found at Miss. Code Ann. § 15-1-49; that statute provides that all actions without a specific period of limitation must be commenced within three years after the cause of action occurred. Heagy v. Hartford Life Ins. Co., 2006 U.S. Dist. LEXIS 43150 (N.D. Miss. June 26, 2006).

Summary judgment was granted to an insurer and an agent in a fraud action relating to the purchase of life insurance because it was time-barred under Miss. Code Ann. § 15-1-49 since the claim should have been filed three years from the completion of the sale; moreover, there was no fraudulent concealment tolling the limitations period since the purchaser was not precluded from discovering her claim in the language of the policy. Warren v.

Horace Mann Life Ins. Co., 949 So. 2d 770, 2006 Miss. App. LEXIS 423 (Miss. Ct. App. 2006).

Where Miss. Code Ann. § 15-1-49's three-year statute of limitations applied, the insurer's motion for summary judgment was granted because the insured's allegation that the insurer failed to disclose pertinent terms of loan transactions and related contracts of insurance was time barred. Additionally, the insured's common defense argument may have been well received at the removal/remand stage of the litigation, but it was inapplicable in the court's summary judgment analysis. Clark v. Commercial Credit Corp., 357 F. Supp. 2d 962, 2005 U.S. Dist. LEXIS 6788 (S.D. Miss. 2005).

Bank's claims that an insurer acted fraudulently in representing that an insurance policy purchased by the bank for one of its trusts could be paid for with a single premium payment was time-barred under the three-year statute of limitations in Miss. Code Ann. § 15-1-49, where the cause of action accrued in 1995 when the insurer informed the bank that additional payment might be due, as was stated in the policy, and the bank did not file suit until 2004. Peoples Bank Asset & Trust Mgmt. Dep't v. Great W. Life & Annuity Ins. Co., 2005 U.S. Dist. LEXIS 16755 (S.D. Miss. Feb. 7, 2005).

Grant of summary judgment against the insureds was proper where their claim against the insurer after the driver insured was injured in an accident was barred by the statute of limitation under Miss. Code Ann. § 15-1-49 because the insurer was added as a defendant to the action more than three years after the extent of the driver insured's injuries was known. Jackson v. State Farm Mut. Auto. Ins. Co., 880 So. 2d 336, 2004 Miss. LEXIS 1053 (Miss. 2004).

Where plaintiff borrowers raised claims, including a claim that the borrowers were wrongfully charged for credit insurance products provided by defendant insurers, the borrowers' claims were governed by, at most, a three-year statute of limitations, under Miss. Code Ann. § 15-1-49(1), as the borrowers obtained their loans between 7 and 11 years prior to filing suit, their claims were time-barred. Queen v. Am. Gen. Fin., Inc., 289 F. Supp. 2d 782, 2003 U.S. Dist. LEXIS 24299 (S.D. Miss. 2003).

There was no statute of limitations problem in an action arising from the failure of an insurance company to refund an unearned premium on an installment contract, notwithstanding that the action was not commenced until three years and six days after the installment contract was satisfied, since the insurance company did not have a duty to refund the unearned premium on the date that the contract was satisfied and did not have a duty to refund without notice of satisfaction of the contract. Mic Life Ins. Co. v. Hicks, 2000 Miss. App. LEXIS 299 (Miss. Ct. App. June 23, 2000), aff'd, in part, rev'd, 2001 Miss. LEXIS 296 (Miss. Oct. 31, 2001).

An insurance company's intervention in an injured worker's third-party tort claim to assert the company's right of subrogation is not subject to a statute of limitations bar so long as the original action was commenced by the injured worker (or his personal representative) within the applicable limitation period. Mississippi Food & Fuel Workers' Compensation Trust v. Tackett, 778 So. 2d 136, 2000 Miss. App. LEXIS 134 (Miss. Ct. App. 2000).

An action for the wrongful refusal to pay life insurance benefits accrues at the time of the specific refusal to pay. Thus, the statute of limitations did not begin to run on an action arising from an alleged wrongful refusal to pay life insurance benefits until the insurer notified the beneficiary that it would not pay the benefits. Young v. Southern Farm Bureau Life Ins. Co., 592 So. 2d 103, 1991 Miss. LEXIS 982 (Miss. 1991).

This section [Code 1942, § 722] was not abridged by a holding that a cause of action for disability benefits under a group insurance policy did not arise until due proof thereof was made, where the policy required due proof of permanent disability in order to recover benefits. Metropolitan Life Ins. Co. v. Lindsey, 184 Miss. 359, 185 So. 573, 1939 Miss. LEXIS 30 (Miss. 1939).

Where disability benefits under an insurance policy were payable at the end of each year, a cause of action accrued for each of them when respectively due, and not before, so that installments which became due more than six years before the commencement of an action for such disability payments, were barred but the remainder were not. Columbian Mut. Life Ins. Co. v. Craft, 186 Miss. 234, 185 So. 225, 1938 Miss. LEXIS 323 (Miss. 1938).

Action on life policy brought after insured's death by beneficiary who contended insurer had wrongfully declared policy void during insured's lifetime, held not barred by limitations because brought more than six years after last premium was remitted by insured, since beneficiary had right to treat policy as in force and delay suit until it became payable upon insured's death. Callender v. Lamar Life Ins. Co., 182 Miss. 609, 182 So. 119, 1938 Miss. LEXIS 199 (Miss. 1938).

Cause of action on double indemnity clause of life policy accrued to beneficiary at time of insured's death or within a reasonable time thereafter. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

Cause of action on disability policy held not to have accrued at time insurer disavowed further liability so as to be barred by limitations, since insurer incurred continuing obligation under its contract and insured had no right to recover payments due prior to due date. Atlantic Life Ins. Co. v. Serio, 171 Miss. 726, 157 So. 474, 1934 Miss. LEXIS 240 (Miss. 1934).

Jury finding that death occurred on day of disappearance does not render action on life insurance policy barred by six-year statute as proof of death could not be made out until expiration of seven years. New York Life Ins. Co. v. Brame, 112 Miss. 828, 73 So. 806, 1916 Miss. LEXIS 188 (Miss. 1916).

31. — —Notes and bonds.

Complaint alleging violations of the Mississippi Uniform Commercial Code concerning forced insurance for loans accrued on the dates of plaintiff borrower's disclosure statement, and absent evidence of an affirmative act preventing the borrower from discovering the claims, the three-year Mississippi statute of limitations, Miss. Code Ann. § 15-1-49(1) was not tolled and the claims were time-barred. Johnson v. Citifinancial, Inc., 2003 U.S. Dist. LEXIS 22527 (S.D. Miss. Feb. 7, 2003).

Where note secured by deed of trust was extended from time to time, but fact of extensions was not noted on margin of record of deed of trust before remedy to enforce it appeared on face of record to be barred, or within six months thereafter, that no cause of action accrued in favor of indorser of note until he paid debt, held immaterial as affects rights of subsequent purchasers without notice. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

Note containing promise to pay "on demand after date" held due and payable on day following date thereof, as regards limitation. S. S. Finger Mercantile Co. v. Adair, 159 Miss. 303, 131 So. 875, 1931 Miss. LEXIS 26 (Miss. 1931).

Six-year statute did not begin to run against note payable on demand until actual demand was made. Spiro v. Shapleigh Hardware Co., 153 Miss. 81, 118 So. 429, 1928 Miss. LEXIS 189 (Miss. 1928).

When demand for interest due on corporate bonds was refused and the principal thereof became at once due and payable in accordance with the provisions of the bonds, the owner's right to collect then and there accrued and the running of limitations must be computed from that date. Central Trust Co. v. Meridian L. & R. Co., 106 Miss. 431, 63 So. 575, 1913 Miss. LEXIS 132 (Miss. 1913).

32. — —Banking.

Trial court abused its discretion in failing to set aside the entry of default because a bank presented a reasonable, colorable defense on the merits regarding a debt-collection company's notice of overdraft charges and whether a significant portion of the company's claims were time barred by the applicable three-year statute of limitations; daily notices and monthly bank statements reflecting the overdraft charges were mailed to the company in 2006, and it filed its complaint in 2010. Franklin Collection Serv. v. Bancorpsouth Bank, — So. 3d —, 2019 Miss. LEXIS 206 (Miss. May 23, 2019).

Facts that individuals claimed a bank employee failed to disclose could have been discovered by the individuals through reasonable diligence more than three years before they filed suit; there was no reasonable possibility that the individuals could establish a claim against the resident defendant and the discovery rule under Miss. Code Ann. § 15-1-49(2) did not toll the statute of limitation. Stacher v. Am. Gen. Fin., Inc., 2003 U.S. Dist. LEXIS 18713 (S.D. Miss. Mar. 7, 2003).

Where in 1943 a bank by mistake credited a deposit to an account of a brother of depositor and both accounts remained inactive until January 1949, when the brother withdrew his account and the bank did not discover the mistake until March 1951 when the active depositor presented his pass book, the cause of action for restitution of the funds did not arise until January 1949 and neither the three- nor the six-year statute of limitation barred suit thereon brought on June 1951. Van Zandt v. First Nat'l Bank, 220 Miss. 127, 70 So. 2d 327, 1954 Miss. LEXIS 417 (Miss. 1954).

Where a bank paid a check to a person other than the drawer, under the belief that the indorsement was genuine, the six-year statute started to run from the date that the bank rendered drawer a statement showing the check to be charged against it. Masonic Ben. Ass'n v. First State Bank, 99 Miss. 610, 55 So. 408, 1911 Miss. LEXIS 232 (Miss. 1911).

33. — —Contracts.

Statute of limitations precluded a former client's claims against an attorney for fraud, breach of contract, and legal malpractice because the statute of limitations began to run when the client sent a letter to the attorney terminating the attorney's employment and on that same date received a copy of the employment contract which the client believed was altered. The complaint which the client filed with the Mississippi Bar did not toll the statute of limitations or require the client to exhaust administrative remedies before filing suit. Archer v. Creel, 217 So. 3d 690, 2016 Miss. App. LEXIS 600 (Miss. Ct. App. 2016), cert. denied, 216 So. 3d 1150, 2017 Miss. LEXIS 186 (Miss. 2017).

Employee's breach-of-contract suit against an employer was time-barred because (1) the action accrued when the employee tendered a letter of resignation stating the conditions of employment had become unbearable, and (2) suit was not filed within three years of that date. Wallace v. Greenville Pub. Sch. Dist., 142 So. 3d 1104, 2014 Miss. App. LEXIS 180 (Miss. Ct. App. 2014).

Plaintiffs sufficiently pled a breach of contract claim against a mortgage servicer by specifically alleging potential breaches, including an incorrect property insurance charge. The date of discovery of the irregularities, for purpose of deciding whether the discovery rule in Miss. Code Ann. § 15-1-49(2) applied, was an issue of fact to be decided by a jury. Bailey v. Am. Home Mortg. Servicing, Inc., 2012 U.S. Dist. LEXIS 78420 (S.D. Miss. June 6, 2012).

In a case in which a buyer sued a software seller for contract claims based on a services agreement, the transaction was governed by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49, and the trial court did not err in dismissing as barred by the statute of limitations the buyer's service contract claims. Peavey Elecs. Corp. v. Baan U.S.A., Inc., 10 So. 3d 945, 2009 Miss. App. LEXIS 194 (Miss. Ct. App. 2009).

Where borrowers signed a loan agreement in 1995 and brought suit against the lender in 2001, claims such as fraud and breach of covenant of good faith and fair dealing, which were governed by the 3-year statute of limitations, were time-barred because the claims arose at the time of the execution of the loan as opposed to at the time that the borrowers were first made aware that better terms existed. Since the borrowers signed and received a copy of the loan containing all the payment terms, they were on notice of the terms complained of as of the time of the execution of the loan agreement in 1995, and the statute of limitations began to run at that time. CitiFinancial Mortg. Co. v. Washington, 967 So. 2d 16, 2007 Miss. LEXIS 590 (Miss. 2007).

Statute of limitations did not run against an attorney and a real estate specialist in the mother and son's action for breach of contract because a Florida property was never sold; because a component of the contract remained to be fulfilled, the statute of limitations had not yet began to run. Bailey v. Estate of Kemp, 955 So. 2d 777, 2007 Miss. LEXIS 182 (Miss. 2007).

Insurer was awarded summary judgment in a debtor's action alleging that the insurer illegally bundled insurance products with loans that the debtor obtained from a creditor because the debtor's claims were barred by the three-year statute of limitations in Miss. Code Ann. § 15-1-49(1); the debtor's claims "accrued" on the dates that he entered into the loans. Donald v. Pioneer Credit Co., 374 F. Supp. 2d 495, 2005 U.S. Dist. LEXIS 16865 (S.D. Miss. 2005).

Trial court did not err in denying motions to dismiss the borrower's claim because the borrower never received reasonable notice of the accounting method used by the lender and the statute of limitation never began to run until, presumably, documents were produced during discovery; however the other borrower did receive reasonable notice of the lender's activities and the statute of limitation began to run earlier and did bar his action against the lender. Am. Bankers' Ins. Co. v. Wells, 819 So. 2d 1196, 2001 Miss. LEXIS 312 (Miss. 2001).

An immediate action based upon an anticipatory breach is a different cause of action from that based on the nonperformance at the contract time, and limitation period does not begin to run upon nonperformance of contractual duty until the cause of action accrues and the duty of performance continues in spite of repudiation. Old Ladies Home Ass'n v. Hall, 212 Miss. 67, 52 So. 2d 650, 1951 Miss. LEXIS 428 (Miss. 1951).

Acceptance of counter proposal altering original contract constitutes new contract from which running of 6-year statute will be computed. Edward Thompson Co. v. Foy, 115 Miss. 848, 76 So. 685, 1917 Miss. LEXIS 268 (Miss. 1917).

34. — —Negligence cases.

Circuit court did not err in granting manufacturers summary judgment because it properly applied Mississippi Supreme Court precedent in determining that a pilot incorrectly attempted to substitute fictitious parties; because the manufacturers were not properly added, the claims against them did not relate back to the original complaint and were barred by the statute of limitations since the amended complaint was filed more than three years and six months after a helicopter crash. Hammons v. Navarre, — So. 3d —, 2017 Miss. App. LEXIS 215 (Miss. Ct. App. Apr. 18, 2017), aff'd, 252 So. 3d 9, 2018 Miss. LEXIS 252 (Miss. 2018).

Client's negligence or professional malpractice claims against the client's court appointed attorney were time-barred because the three-year statute of limitations period began to run from the date of the client's sentencing hearing as the client knew that the attorney had acted negligently when the client was sentenced as a habitual offender in that, at the time of the sentencing, the client informed the attorney that the client had not served a full year on one of the client's convictions. Bradley v. Jordan, 182 So. 3d 439, 2016 Miss. LEXIS 28 (Miss. 2016), overruled, Trigg v. Farese, 266 So. 3d 611, 2018 Miss. LEXIS 469 (Miss. 2018).

Trial court erred in denying a bank's motion for summary judgment on a guardian's claims for conversion of a negotiable instruments and negligence/gross negligence because the claims were filed outside the three-year statute of limitations, the discovery rule was inapplicable to the conversion claim where the guardian conceded that the bank was not involved in an attorney's fraudulent concealment, and the guardian lacked diligence in failing to obtain and review any account statements for more than a year and a half on one account and more than eight years on the other. Peoples Bank of Biloxi v. McAdams, 171 So. 3d 505, 2015 Miss. LEXIS 392 (Miss. 2015).

Relying on a directive from the Mississippi Supreme Court in the Edwards decision, the United States Court of Appeals for the Fifth Circuit found that, under Miss. Code Ann. § 15-1-49, a daughter's cause of action for wrongful death accrued when the mother was diagnosed with breast cancer, not when knowledge of the injury and its cause were known. Barnes ex rel. Barnes v. Koppers Inc., 534 F.3d

357, 2008 U.S. App. LEXIS 13771 (5th Cir. Miss. 2008).

Discovery rule of Miss. Code Ann. § 15-1-49(2) barred as untimely plaintiff's action against a manufacturer for an allegedly defective implantable cardioverter defibrillator (ICD) because reasonable diligence would have put plaintiff on notice that the death of the decedent could have been caused by the ICD and that some negligent conduct occurred. Greer v. Medtronic, Inc., 2008 U.S. Dist. LEXIS 34376 (N.D. Miss. Apr. 25, 2008).

Where borrowers signed a loan agreement in 1995 and brought suit against the lender in 2001, negligence claim governed by the 3-year statute of limitations was time-barred because it arose at the time of the execution of the loan, when plaintiffs signed and received a copy of the terms of the contract, as opposed to at the time that the borrowers were first made aware that better terms existed. CitiFinancial Mortg. Co. v. Washington, 967 So. 2d 16, 2007 Miss. LEXIS 590 (Miss. 2007).

Insurance agent's cause of action against the insurer did not accrue or occur pursuant to Miss. Code Ann. § 15-1-49(1) until the insureds filed suit against him in 2000; the agent did not have a cause of action when the policy was sold in 1990, nor was he or should have been aware of the fraud allegedly committed by the insurer upon him and the insureds. Bullard v. Guardian Life Ins. Co. of Am., 941 So. 2d 812, 2006 Miss. LEXIS 634 (Miss. 2006).

Discharged Chapter 7 debtor's legal malpractice claim against his bankruptcy attorney for alleged negligence in handling case arose prepetition, and thus was estate property, despite debtor's claim that he was not injured until indicted, post-discharge, for bankruptcy fraud; debtor and attorney had prepetition relationship required to treat claim as arising when alleged misconduct occurred, and debtor should have discovered any discrepancies between actual assets and those listed on petition when he signed petition, as required for claim to accrue under Mississippi law. Wheeler v. Magdovitz (In re Wheeler), 137 F.3d 299, 1998 U.S. App. LEXIS 6192 (5th Cir. Miss. 1998).

In a negligence action against a tobacco company arising out of lung cancer allegedly sustained by the plaintiff as a result of cigarette smoking, the statute of limitations under § 15-1-49 commenced to run upon discovery of the lung cancer. Schiro v. American Tobacco Co., 611 So. 2d 962, 1992 Miss. LEXIS 827 (Miss. 1992).

A discovery rule would be adopted in conjunction with § 15-1-49 in the case of a negligence or products liability cause of action involving latent disease; the discovery rule adopted is identical to the rule provided in § 15-1-49(2). The cause of action accrues and the limitations period begins to run when the plaintiff can reasonably be held to have knowledge of the injury or disease. Owens-Illinois, Inc. v. Edwards, 573 So. 2d 704, 1990 Miss. LEXIS 837 (Miss. 1990).

Medical malpractice action was not barred by statute of limitations where alleged negligent act occurred on June 28, 1974, foreign object was discovered in lining of patient's heart on June 21, 1982, and action was filed on June 14, 1984, because enactment of specific statute of limitations, § 15-1-36, dealing with malpractice tort claims, controlled over general statute, § 15-1-49; specific statute defined date of accrual of action as being date of alleged act, omission, or neglect, or date injury would or with reasonable diligence might have been first known or discovered, and provided that it applied to claims which accrued on or after July 1, 1976; fact that different definition of accrual may have been accepted with respect to general 6-year statute of limitations was beside point, because that definition had been superseded by specific statute of limitations. Kilgore v. Barnes, 508 So. 2d 1042, 1987 Miss. LEXIS 2448 (Miss. 1987).

35. — —Heirship.

Suit to establish heirship was well within 6 year limitation period from event triggering running of statute, which was receipt of notice of heir's potential interest in property, because statute does not begin to run until heir knows his status has been questioned and is not required to bring suit to establish rights unless and until there is question concerning his status as heir. Matter of Heirship of McLeod (Miss. 1987) 506 So. 2d 289. In re Heirship of McLeod, 506 So. 2d 289, 1987 Miss. LEXIS 2508 (Miss. 1987).

An illegitimate daughter's petition to determine heirship was not a paternity action, and therefore was not barred by § 15-1-49 when she failed to file suit within six years of reaching majority, since under § 91-1-15, the determination of heirship could not be made prior to the decedent's death, and, until then, her cause of action did not accrue. Estate of Kidd v. Kidd, 435 So. 2d 632, 1983 Miss. LEXIS 2600 (Miss. 1983).

36. —Joint causes of action.

A joint right of action for waste which accrues to remaindermen while they are infants is not barred by limitation as to any of them until the lapse of the statutory period after the youngest has attained his majority; but a joint right of action therefor which accrues to them after the eldest has attained his majority is barred as to all of them after the lapse of the statutory period. Learned v. Ogden, 80 Miss. 769, 32 So. 278, 1902 Miss. LEXIS 304 (Miss. 1902).

The six years' limitation applies to claims of adult heirs for rent of land procured from their mother by duress, and is not suspended as to them by the minority of other heirs, the claims not being necessarily joint. Allen v. Leflore County, 80 Miss. 298, 31 So. 815 (Miss. 1902).

Where at the accrual of a joint cause of action one of the parties is not under disability the statute will run against all and when one is barred all are. Stauffer v. British & American Mortg. Co., 77 Miss. 127, 25 So. 299, 1899 Miss. LEXIS 46 (Miss. 1899).

37. —Computation of limitation period.

Where defendant has not been in the state at all, as well as where he resided here when the cause of action accrued and subsequently removed, in computing the six years the time of his absence is not to be counted. Robinson v. Moore, 76 Miss. 89, 23 So. 631, 1898 Miss. LEXIS 66 (Miss. 1898).

If a judgment by default, valid on its face, is vacated at a subsequent term on motion of defendant, and he pleads the statute of limitations, the time elapsed since the declaration was filed cannot be computed. Kelly v. Harrison, 69 Miss. 856, 12 So. 261, 1892 Miss. LEXIS 18 (Miss. 1892).

38. — Tolling of statute.

Pilot's claims all accrued on the date of his injury, and the statute of limitations was not tolled because the pilot submitted no evidence sufficient to meet his burden of proof that manufacturers were not amenable to service during the limitations period; the pilot served or attempted service on all of the manufacturers soon after he filed his amended complaint. Hammons v. Navarre, — So. 3d —, 2017 Miss. App. LEXIS 215 (Miss. Ct. App. Apr. 18, 2017), aff'd, 252 So. 3d 9, 2018 Miss. LEXIS 252 (Miss. 2018).

Statute of limitations precluded a former client's claims against an attorney for fraud, breach of contract, and legal malpractice because the statute of limitations began to run when the client sent a letter to the attorney terminating the attorney's employment and on that same date received a copy of the employment contract which the client believed was altered. The complaint which the client filed with the Mississippi Bar did not toll the statute of limitations or require the client to exhaust administrative remedies before filing suit. Archer v. Creel, 217 So. 3d 690, 2016 Miss. App. LEXIS 600 (Miss. Ct. App. 2016), cert. denied, 216 So. 3d 1150, 2017 Miss. LEXIS 186 (Miss. 2017).

Plaintiff did not elaborate as to how or when he was able to discover that defendant had manufactured the bed in question, and thus there was insufficient information to conclude that anyone had concealed that fact, plus plaintiff offered no explanation as to why he could not sue defendant based on the information that was available; it was within the circuit court's discretion to deny plaintiff's request to amend his complaint, as he did not show that the statute of limitations was tolled due to fraudulent concealment, and his complaint was filed two years beyond the statute. Patel v. Hill-Rom Co., 194 So. 3d 898, 2016 Miss. App. LEXIS 432 (Miss. Ct. App. 2016).

For fraudulent concealment purposes, plaintiff bore the burden of proving that defendant engaged in affirmative acts of concealment and that plaintiff acted with due diligence in attempting to discover defendant's role but was not able to do so. Patel v. Hill-Rom Co., 194 So. 3d 898, 2016 Miss. App. LEXIS 432 (Miss. Ct. App. 2016).

Circuit court erred in dismissing a driver's personal injury complaint with prejudice because the driver exhibited good cause for not timely serving process on the insured where the record clearly showed that over a period of almost two years, the driver unsuccessfully attempted to locate the insured, the Secretary of State attempted to forward the summons to the insured, but it was returned unclaimed, the insured could not be located by the driver, the courts, or his own insurance carrier, and the circuit court failed to consider that the statute of limitations could be tolled. Darville v. Mejia, 184 So. 3d 312, 2016 Miss. App. LEXIS 3 (Miss. Ct. App. 2016).

Circuit court properly granted an employer's motion to dismiss–an employee's action for assault, battery, intentional and negligent infliction of emotional distress, and breach of an employment contract as untimely because, while the employee was underage when employer allegedly began to sexually abuse her, she failed to show that, when her employer allegedly sexually abused her, she was of unsound mind, legal infancy, suffered a latent injury, or that there was something secretive or inherently undiscoverable about the alleged acts or wrongdoing, the discovery rule was inapplicable where the alleged wrongful acts were physical and the employee was aware of the wrongdoing when it happened. Reeg v. Keel, 174 So. 3d 309, 2015 Miss. App. LEXIS 425 (Miss. Ct. App. 2015).

Worker's action was not time-barred because his initial complaint tolled the statute of limitations for the entirety of the time that claim was pending. Mine Safety Appliance Co. v. Holmes, 171 So. 3d 442, 2015 Miss. LEXIS 189 (Miss. 2015).

Plaintiff's claim was not time-barred by the three year statute of limitations under Miss. Code Ann. § 15-1-49 because her claim was tolled until such time as she was aware of the injury and the cause of that injury. Cross v. Amtec Med., Inc., 2012 U.S. Dist. LEXIS 141508 (S.D. Miss. Sept. 30, 2012).

Welder's products liability and failure to warn action, filed on August 31, 2004, against two manufacturers did not toll the three-year statute of limitations in Miss. Code Ann. § 15-1-49 because the welder voluntarily dismissed the complaint on December 28, 2004; the welder's subsequent complaint filed on November 14, 2005 was time-barred under § 15-1-49 because the welder knew of the injury on September 3, 2002. Lincoln Elec. Co. v. McLemore, 54 So. 3d 833, 2010 Miss. LEXIS 639 (Miss. 2010).

Although the filing of a personal injury lawsuit tolled the three-year statute of limitations under Miss. Code Ann. § 15-1-49 four days before its expiration, the limitations period resumed running at the end of the service of process period under Miss. R. Civ. P. 4(h) and, thus, dismissal with prejudice was proper where process was not served until six days after the expiration of the 120-day service period. Stutts v. Miller, 37 So. 3d 1, 2010 Miss. LEXIS 146 (Miss. 2010).

In a case in which five car buyers brought their state law claims against an auto financier more than six years after their financing transactions, those claims were untimely. The claims were subject to the three-year limitations period in Miss. Code Ann. § 15-1-49(1), and the buyers could not toll the limitations period by using Miss. Code Ann. § 15-1-67 because they simply failed to allege a subsequent act of concealment separate from the alleged fraud underlying the cause of action. Archer v. Nissan Motor Acceptance Corp., 550 F.3d 506, 2008 U.S. App. LEXIS 25292 (5th Cir. Miss. 2008).

In a wrongful death case, a daughter's claim was barred by the statute of limitations in Miss. Code Ann. § 15-1-49. She raised her 42 U.S.C.S. § 9658 claim as an afterthought, and she overbroadly construed its preemptive scope; the daughter's plea for the tolling of Miss. Code Ann. § 15-1-49 by means of 42 U.S.C.S. § 9658 was rejected. Barnes ex rel. Barnes v. Koppers Inc., 534 F.3d 357, 2008 U.S. App. LEXIS 13771 (5th Cir. Miss. 2008).

Excess insurer's fraud and other tort claims against parties involved in settling medical malpractice claims against two doctors were barred under the limitations periods in Miss. Code Ann. §§ 15-1-35, 15-1-49, which were not tolled under Miss. Code Ann. § 15-1-67 because a letter from counsel for one of the doctors, which letter was written one year before the insurer filed suit, invited the excess insurer to discuss the withdrawal of the doctor's consent to settle, which the excess insurer alleged led to its payment obligations on behalf of another doctor whose primary coverage was exhausted, and counsel's letter did not attempt to conceal anything from the excess insurer. Nat'l Union Fire Ins. Co. v. Blasio, 2008 U.S. Dist. LEXIS 42669 (N.D. Miss. May 23, 2008).

Trial court improperly granted summary judgment, pursuant to Miss. R. Civ. P. 56, to a paint company with respect to a child's claims of injury resulting from ingestion of lead found in paint that the company manufactured because the child's claims were not barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49, as the child was a minor when the claims accrued, and therefore the claims were subject to the savings statute, Miss. Code Ann. § 15-1-59; because the child's claims were improperly dismissed, he was denied his right to a jury trial as set forth in Miss. Const. Art. III, § 31, but the claims of the child's mother were properly dismissed as time-barred. Pollard v. Sherwin-Williams Co., 955 So. 2d 764, 2007 Miss. LEXIS 31 (Miss. 2007).

Insureds' claims against financial services companies were barred by a three-year limitations period of Miss. Code Ann. § 15-1-49(1) and there was no basis for tolling due to fraudulent concealment in that the insureds were bound by the contents of the contracts they signed that contained the purchase of insurance with the loan, whether or not they read them, and there was no evidence of subsequent affirmative acts of concealment. Clay v. First Family Fin. Servs., 2006 U.S. Dist. LEXIS 58385 (N.D. Miss. Aug. 18, 2006).

Plaintiff's personal injury claims against the manufacturers of products that allegedly contained asbestos were time-barred under the three-year statute of limitations in Miss. Code Ann. § 15-1-49; although plaintiff properly filed his complaint within three years of his asbestosis diagnosis and the statute of limitations was tolled during the 120-day period in which plaintiff had to effect service of process, where plaintiff failed to effect service within 120 days, the statute of limitations resumed running and expired before plaintiff could refile his complaint. Riley v. Ga. Pac. Corp., 2006 U.S. Dist. LEXIS 1440 (N.D. Miss.), dismissed, 2006 U.S. Dist. LEXIS 1623 (N.D. Miss. Jan. 5, 2006).

Where borrowers claimed that they were misled into believing that they needed to obtain credit life and disability insurance in order to obtain loans, the court found that the borrowers' claims, which accrued more than three years before the lawsuit was filed, were time-barred pursuant to Miss. Code Ann. § 15-1-49; tolling pursuant to Miss. Code Ann. § 15-1-67 was inapplicable because of affirmative disclosures made in the borrowers' loan applications and the Federal Disclosure Statements. Benson v. Am. Heritage Life Ins. Co., 2006 U.S. Dist. LEXIS 49851 (S.D. Miss. July 14, 2006).

Because a nationwide class action brought against defendant lenders in state court was filed more than three years after plaintiff borrowers' loan transactions, the class action did not toll the limitations period and could not revive the borrower's claims which were already barred under Miss. Code Ann. § 15-1-49. Smith v. First Family Fin. Servs., 436 F. Supp. 2d 836, 2006 U.S. Dist. LEXIS 45930 (S.D. Miss. 2006).

Summary judgment for bank was affirmed pursuant to statute of limitations in Miss. Code Ann. § 15-1-49 as the bank customer's possession of bank documents with clear statements presented on their face negated the bank customer's argument that the statutory period should be extended beyond the three year period due to fraudulent concealment by the bank. Morgan v. Citizens Bank, 912 So. 2d 1133, 2005 Miss. App. LEXIS 744 (Miss. Ct. App. 2005).

Consumers' civil antitrust action, which was filed against a distributor, was subject to the period of limitations for latent injuries, under Miss. Code Ann. § 15-1-49(2), because the undertaking of a criminal conspiracy was seldom if ever, announced to the public, and the efforts of the distributor to engage in price fixing was just such a conspiracy. Carder v. BASF Corp., 919 So. 2d 258, 2005 Miss. App. LEXIS 448 (Miss. Ct. App. 2005).

Insureds' fraud and misrepresentation claims arising out of the purchase of life insurance were dismissed pursuant to Fed. R. Civ. P. 12 (b)(6) because the action was barred by the statute of limitations, Miss. Code Ann. § 15-1-49, since the insureds did not allege that defendants engaged in any affirmative act or conduct that prevented the insureds from discovering their claims, which would have invoked the tolling provisions of the fraudulent concealment statute, Miss. Code Ann. § 15-1-67. O'Bannon v. Guardian Life Ins. Co. of Am., 331 F. Supp. 2d 476, 2004 U.S. Dist. LEXIS 24314 (S.D. Miss. 2004).

Plaintiff who filed a complaint against a defendant but did not serve the complaint on the defendant within a 120-day period had to either re-file a complaint before the statute of limitation ran or show good cause for failing to serve process on the defendant within that 120-day period, otherwise, dismissal was proper; although tolled for the 120 days after the complaint was filed, the statute of limitations, Miss. Code Ann. § 15-1-49, expired before the December 3 summons was issued, and the statute of limitations expired long before the victim filed his amended complaint in February 2003. Williams v. Fornett, 906 So. 2d 810, 2004 Miss. App. LEXIS 1151 (Miss. Ct. App. 2004).

Where investors alleged that investment companies were aware of their agent's conversion of the investors' funds before the criminal activity was publicly disclosed, neither fraudulent concealment nor equitable estoppel applied to toll the limitations periods; after the agent's misconduct was discovered, the investors delayed filing their complaints against the companies until well after the limitations periods expired and there was no conduct of the companies that caused the investors' undue delay. Joe v. Minn. Life Ins. Co., 337 F. Supp. 2d 821, 2004 U.S. Dist. LEXIS 19281 (S.D. Miss. 2004).

Summary judgment was granted to corporations' on fraudulent misrepresentation claims because the tolling provisions of Miss. Code Ann. § 15-1-67 were inapplicable, and thus individuals' claims were barred by the three year statute of limitation in Miss. Code Ann. § 15-1-49, where there was no evidence that the corporations engaged in affirmative acts of concealment that prevented the individuals from discovering their claims in a timely manner, in that the individuals' allegations instead focused on the corporations' alleged conduct prior to, and contemporaneous with, the purchase of the insurance policies. Bland v. Fleet Fin., Inc., 318 F. Supp. 2d 392, 2004 U.S. Dist. LEXIS 14997 (N.D. Miss. 2004).

Claims arising from loans that were used to buy insurance were time-barred because the insureds failed to prove an affirmative act of fraudulent concealment after completion of the insurance sales in order to toll the statute of limitations. Ross v. Citifinancial, Inc., 344 F.3d 458, 2003 U.S. App. LEXIS 18068 (5th Cir. Miss. 2003), cert. denied, 546 U.S. 813, 126 S. Ct. 335, 163 L. Ed. 2d 48, 2005 U.S. LEXIS 5535 (U.S. 2005).

Borrower's misrepresentation and negligence claims against a credit insurer's employee were time-barred and the statute was not tolled under Miss. Code Ann. § 15-1-67 because the borrower received, but did not read, copies of all pertinent documents, which clearly stated that credit insurance was optional. Bell v. Am. Gen. Fin., Inc., 267 F. Supp. 2d 582, 2003 U.S. Dist. LEXIS 10718 (S.D. Miss. 2003).

Purchasers alleged facts sufficient to invoke the fraudulent inducement exception to the parole evidence rule because their allegations arose almost entirely out of false representations made by the agents to induce them to enter into contracts; therefore, given Mississippi precedent supporting a claim for fraud where the plaintiff did not read the contract but instead relied on the agent's misrepresentations, the purchasers stated an arguably reasonable basis that they could establish a claim for fraudulent concealment, that the three-year statute of limitations under Miss. Code Ann. § 15-1-49 had been tolled by fraudulent concealment, and that their claims were not time-barred. Anderson v. Equitable Life Assur. Soc'y of the United States, 248 F. Supp. 2d 584, 2003 U.S. Dist. LEXIS 3135 (S.D. Miss. 2003).

The rule of concealed fraud did not toll the statute of limitations in an action by a judgment creditor alleging a fraudulent conveyance of real property by the judgment debtor as the rule of concealed fraud cannot apply to matters of public record. O'Neal Steel, Inc. v. Millette, 797 So. 2d 869, 2001 Miss. LEXIS 31 (Miss. 2001).

The defendant was not equitably estopped from asserting the limitations period in an action to enforce a promissory note, notwithstanding that he continued to make 74 monthly payments after the balloon payment on the note became due, as there was no evidence that the plaintiff relied on the defendant or that he sought to induce the plaintiff's reliance. EB, Inc. v. Smith, 757 So. 2d 1017, 2000 Miss. App. LEXIS 92 (Miss. Ct. App. 2000).

The limitations period for the enforcement of a promissory note was not tolled by the fact that the defendant continued to make 74 monthly payments after the balloon payment on the note became due since such payments did not unequivocally acknowledge when the balance was due, to whom the balance was due, and for what the balance was due, and, moreover, such payments did not contain a specification of the debt referred to and a promise to pay a fixed amount. EB, Inc. v. Smith, 757 So. 2d 1017, 2000 Miss. App. LEXIS 92 (Miss. Ct. App. 2000).

The discovery rule applied in an action seeking damages to property caused by the disposal of oil field waste buried in pits upon the property, where the waste included radioactive material produced by oil and gas exploration, and where the presence of the radioactive waste was detectable only through the use of a survey meter. Donald v. AMOCO Prod. Co., 735 So. 2d 161, 1999 Miss. LEXIS 125 (Miss. 1999).

The discovery rule is inapplicable in actions involving conversion of negotiable instruments unless the defendant asserting the statute of limitations is involved in the fraudulent concealment. Smith v. Franklin Custodian Funds, Inc., 726 So. 2d 144, 1998 Miss. LEXIS 526 (Miss. 1998).

The statute of limitations in a legal malpractice action was not tolled through fraudulent concealment even if the defendant attorney did fraudulently conceal his negligence since the plaintiffs, through the exercise of reasonable diligence, should have been able to discover the attorney's negligence more than 6 years prior to the date on which the complaint was filed where there was very little that the plaintiffs alleged in their complaint that they did not know 9 years before the malpractice suit was filed. Stevens v. Lake, 615 So. 2d 1177, 1993 Miss. LEXIS 73 (Miss. 1993).

Products liability action against manufacturer of drug stelazine was barred by 6-year statute of limitations in § 15-1-49, where last incidence of prescription of drug and onset of symptoms of side-effect condition occurred more than 6 years prior to commencement of suit; statute of limitations was not tolled because there was no evidence of fraudulent concealment of the plaintiff's condition. Lindley v. Hamilton, 883 F.2d 360, 1989 U.S. App. LEXIS 13873 (5th Cir. Miss. 1989).

In an action for wrongful death filed by the surviving spouse and children after the statutory limitation period had passed, § 15-1-59, the savings statute, did not toll the limitations period in favor of the children, since the surviving spouse was a person in esse who had the right to file suit for wrongful death during the six-year limitation period after decedent's death, and thus the action was barred. Arender v. Smith County Hospital, 431 So. 2d 491, 1983 Miss. LEXIS 2633 (Miss. 1983).

Even though partial payment on a note executed and delivered in Alabama might operate in substance as a new promise under the Alabama law, the Mississippi statute relating to the remedy would be applicable in case of an attempt to enforce the obligation in Mississippi, and therefore such payments in Alabama would not toll the running of the limitation period, in view of a statutory provision that in actions founded upon contracts the case would not be taken out of the operation of the limitation statute, unless an acknowledgment or promise of the indebtedness should be made in writing signed by the party chargeable therewith. Montgomery v. Yarbrough, 192 Miss. 667, 6 So. 2d 925 (Miss. 1942).

In absence of proof of concealed fraud on part of insurer with respect to cause of insured's death which would toll statute of limitations until discovery of true facts, action for double indemnity benefits held barred by six-year statute. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

The filing of declaration on November 14, 1936, with request to circuit clerk to issue summons at once in action on note which was due November 15, 1930, constituted the beginning of a suit which stopped running of six-year statute of limitation, notwithstanding clerk delayed issuance of summons until November 18, 1936, and summons was not served until December 3, 1936. Wood v. Peerey, 179 Miss. 727, 176 So. 721, 1937 Miss. LEXIS 77 (Miss. 1937).

Statement in trust deed that former trust deeds by grantors or grantor and wife remained in full force was promise to pay tolling limitation statute. Herron v. Land, 151 Miss. 893, 119 So. 823, 1929 Miss. LEXIS 252 (Miss. 1929).

Where wife signed homestead trust deed husband's acknowledgment in writing of debt before bar of limitation statute bound wife. Herron v. Land, 151 Miss. 893, 119 So. 823, 1929 Miss. LEXIS 252 (Miss. 1929).

39. Service of process

Circuit court properly dismissed an injured driver's claims against a delivery company and an employee for insufficient service of process and denied his motion to amend his complaint to add the employee's actual employer as a defendant because the driver did not properly serve the company within the 120-day deadline, the company did not attempt to evade process or mislead the driver, he only attempted to serve the employee by publication and failed to do so in compliance with the Rules, the three-year statute of limitations ran before the employee was properly served, the driver failed to obtain a ruling on his motion for extension and failed to demonstrate good cause for extension, and the motion for leave to amend the complaint was moot. Hadley v. FedEx Ground Package Sys, — So. 3d —, 2019 Miss. App. LEXIS 178 (Miss. Ct. App. Apr. 30, 2019).

40. Particular cases; miscellaneous.

Appellant argued that even though the trial court ruled that the general three-year limitations period applied to appellee's claims, the chart included calculations from a seven-month period that fell outside the statute-of-limitations period, yet the trial court did not strike those particular calculations or provide for any other adjustment or explanation to the jury; the chart should not have been allowed into evidence. Waste Mgmt. of Miss. v. Jackson Ramelli Waste LLC, — So. 3d —, 2019 Miss. App. LEXIS 373 (Miss. Ct. App. Aug. 6, 2019).

Circuit court properly denied a motion to dismiss a conversion claim on the grounds that it was untimely under Miss. Code Ann. § 15-1-49 (Rev. 2012) where, based on the complaint, the bank could have wrongfully possessed the collateral for a promissory note when it auctioned it off and sold it, which was within three years of the date the complaint was filed. Covington Cnty. Bank v. Magee, 177 So. 3d 826, 2015 Miss. LEXIS 517 (Miss. 2015).

As appellant failed to file a motion for extension of time to serve an estate until more than 120 days after filing the complaint, and as the statute of limitations (Miss. Code Ann. § 15-1-49) expired thereafter, the trial court did not abuse its discretion in dismissing his suit against the estate with prejudice. Covington v. McDaniel (In re Estate of Necaise), 126 So. 3d 49, 2013 Miss. App. LEXIS 108 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 598 (Miss. 2013), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 601 (Miss. 2013), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 610 (Miss. 2013).

Court of appeals erred in reversing an order granting an employer's motion for summary judgment in a widow's action alleging bad faith for failing to timely pay workers' compensation benefits because the Mississippi Workers' Compensation Commission's final judgment affirming an administrative law judge's order awarding the widow benefits marked the end of its involvement in the case, and since the widow's suit was filed more than three years later, it was time-barred under the general three-year statute of limitations, Miss. Code Ann. § 15-1-49; the plain language of Miss. Code Ann. § 71-3-51 provided that "the final award of the Commission shall be conclusive and binding unless either party shall appeal," and since no party appealed the Commission's decision, the "unless" qualifier was irrelevant, and according to the statute's very specific, unambiguous language, the Commission's award was "final" and "conclusive and binding." Harper v. Cal-Maine Foods, Inc., 43 So. 3d 401, 2010 Miss. LEXIS 307 (Miss. 2010).

Plaintiff's claim for breach of contract against an asbestos manufacturer was unsuccessful because plaintiffs did not timely submit their settlement documents to the manufacturer, as required by the settlement agreement, and the action was time-barred by Miss. Code Ann. § 15-1-49(1). Everitt v. Pneumo Abex, LLC, 703 F. Supp. 2d 630, 2009 U.S. Dist. LEXIS 115837 (S.D. Miss. 2009), rev'd, 411 Fed. Appx. 726, 2011 U.S. App. LEXIS 2944 (5th Cir. Miss. 2011).

Whether lender's claims were founded upon unwritten contracts, making them subject to the three-year limitations of Miss. Code Ann. § 15-1-29, or whether they fell within the general three- year limitations of Miss. Code Ann. § 15-1-49, the result was the same where (i) the last payment made upon the loans was in March 2001, (ii) the action to collect on the delinquent loans was filed in January 2005, (iii) the action to collect on the delinquent loans was filed approximately three years and ten months from the date of default, and (iv) the fact that the lender was fully aware that no payments were being made on these delinquent loans between March 2001 and January 2005 was beyond debate; thus, the claims were time-barred. Morgan v. Stevens, 989 So. 2d 482, 2008 Miss. App. LEXIS 489 (Miss. Ct. App. 2008).

After a guardianship account was drained, the twenty-four-year-old ward sued the bank for breaching its duty by allowing the funds on deposit to be converted without a court order. The claim was barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49, because it was not filed within three years of the ward turning twenty-one. Williams v. Duckett (In re Duckett), 991 So. 2d 1165, 2008 Miss. LEXIS 307 (Miss. 2008).

Beneficiaries' action was not purely and exclusively equitable and they sought no equitable relief and did not seek to impose a constructive trust; the beneficiaries sought purely legal relief, namely compensatory and punitive money damages, such that the cause of action and the remedy of the case were not purely and exclusively equitable and the chancellor did not err in applying the general six-year statute of limitations of Miss. Code Ann. § 15-1-49. Winters v. AmSouth Bank, 964 So. 2d 595, 2007 Miss. App. LEXIS 582 (Miss. Ct. App. 2007).

Since accrued royalties were personal property and not an interest in land, Miss. Code Ann. § 15-1-7 was inapplicable; there being no specific statute of limitations for actions seeking recovery of accrued royalties, the general, three-year statute of Miss. Code Ann. § 15-1-49(1) required the trustee to bring the action against the oil companies within three years next after the cause of such action accrued. Nygaard v. Getty Oil Co., 918 So. 2d 1237, 2005 Miss. LEXIS 422 (Miss. 2005).

Customers' claims that they were fraudulently induced by insurance company employees to purchase credit insurance policies in connection with consumer loans were barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49 because all claims accrued at the time the loan agreements were executed because the customers were charged with notice where it was undisputed that each loan agreement contained an insurance disclosure which informed the borrower that credit insurance was not required and that the decision to make the loan would not be affected by the borrower's decision. The customers failed to establish or allege any fraudulent concealment, therefore the customers could not avail themselves of the tolling mechanism provided under Miss. Code Ann § 15-1-67. Andrus v. Ellis, 887 So. 2d 175, 2004 Miss. LEXIS 1343 (Miss. 2004).

Three statutes of limitation in Miss. Code Ann. § 15-1-49(1) applied to bar landowners' claim against the city for failing to enforce a contract with a railroad to maintain a city bridge. Hobson v. City of Vicksburg, 874 So. 2d 1026, 2004 Miss. App. LEXIS 541 (Miss. Ct. App. 2004).

In an action by Mississippi borrowers against an out-of-state lender and four Mississippi employees of the lender, the borrowers' myriad claims against the employees were barred by the three-year limitation period of Miss. Code Ann. § 15-1-49(1) and the employees had to be dismissed from the action, where the borrowers alleged that defendants wrongfully induced the borrowers to buy credit insurance when the borrowers obtained their loans, and where Miss. Code Ann. § 15-1-67 did not toll the limitation period because the loan documents clearly showed that credit insurance was being purchased. Frye v. Am. Gen. Fin., Inc., 304 F. Supp. 2d 876, 2004 U.S. Dist. LEXIS 8489 (S.D. Miss.), amended, 307 F. Supp. 2d 836, 2004 U.S. Dist. LEXIS 19108 (S.D. Miss. 2004).

In borrowers' suit against lenders, insurers, and individuals, arising from loan transactions, removal was appropriate based upon diversity of citizenship because the individuals were fraudulently joined; the claims against the individuals were time-barred and the borrowers failed to show fraudulent concealment for tolling of the statute of limitations. Owens v. First Family Fin. Servs., 2003 U.S. Dist. LEXIS 25345 (S.D. Miss. May 29, 2003).

Though a 29-year-old alleged son filed a paternity action not to enforce his alleged father's child support obligations, but for the sole purpose of knowing his ancestry, the trial court properly dismissed the case as time-barred; whether Miss. Code Ann. §§ 93-9-9 or 15-1-49 was the applicable statute of limitations was immaterial, as under the former, his suit was time-barred when he turned 21, and under the latter, when he turned 24 (i.e., three years after he turned 21). Autrey v. Parson, 864 So. 2d 294, 2003 Miss. App. LEXIS 685 (Miss. Ct. App. 2003), cert. denied, 864 So. 2d 282, 2004 Miss. LEXIS 43 (Miss. 2004), cert. denied, 543 U.S. 831, 125 S. Ct. 216, 160 L. Ed. 2d 49, 2004 U.S. LEXIS 5831 (U.S. 2004).

The three-year limitation provided for in the statute applied to an action by a judgment creditor in which it was alleged that the judgment debtor had fraudulently conveyed real property to his son. O'Neal Steel, Inc. v. Millette, 797 So. 2d 869, 2001 Miss. LEXIS 31 (Miss. 2001).

An action by an inmate regarding whether the forfeiture of his money and gold coins was legally had was barred by the statute of limitations where the inmate received notice of the forfeiture proceeds in 1989 but did not commence his action until seven years later. Sheriff v. Morris, 767 So. 2d 1062, 2000 Miss. App. LEXIS 452 (Miss. Ct. App. 2000).

An action against a bank arising from its attempt to collect a balance on a credit card which was stolen from the plaintiff was barred by the statute of limitations since the plaintiff failed to assert any acts of negligence by the bank after December 13, 1991, when $49.00 was erroneously charged to his account. Later actions by the bank in referring the account to several collection agencies did not constitute additional negligent activities for purposes of the statute of limitations. Hazzard v. Chase Manhattan Corp., 2000 U.S. Dist. LEXIS 10812 (N.D. Miss. July 21, 2000), aff'd, 275 F.3d 1078, 2001 U.S. App. LEXIS 25707 (5th Cir. Miss. 2001).

A suit against state of Mississippi education officials for alleged violation of educational rights assured under Art 4 of the Mississippi Constitution of 1868-1869 was time barred under § 15-1-49, as the plaintiffs could not demonstrate that they were not aware of the harm inflicted by the Mississippi Constitution more than 3 years prior to the bringing of the suit. A-1 v. Molpus, 906 F. Supp. 375, 1995 U.S. Dist. LEXIS 18525 (S.D. Miss. 1995).

The limitation of action period provided in § 15-1-49 applies to claims for deprivation of property brought pursuant to 42 USC § 1983. Bankston v. Pass Rd. Tire Center, Inc., 611 So. 2d 998, 1992 Miss. LEXIS 833 (Miss. 1992).

Where plaintiff, recipient of certain scholarship funds as financial assistance for medical school costs and tuition, was required to fulfill 4 year service obligation at approved health care facility, and signed private practice assignment agreement with health care facility, with such agreement stating that it would be "negotiable at the end of one year", and accepted employment there, but was terminated 10 months later with the termination being memorialized as a nonrenewal of employment agreement, § 15-1-35 was not applicable to portion of complaint alleging termination of his employment, rather appropriate provision was "catch all" statute of limitations § 15-1-49. Robinson v. Coastal Family Health Center, Inc., 756 F. Supp. 958, 1990 U.S. Dist. LEXIS 18728 (S.D. Miss. 1990).

Mississippi's general statute of limitations is considered procedural and therefore applies to actions in Mississippi arising under laws of another jurisdiction. Bastoe v. Sterling Drug, Inc., 683 F. Supp. 586, 1988 U.S. Dist. LEXIS 3064 (S.D. Miss. 1988).

The 10-year limitation of § 15-1-39 is applicable to both express and implied trusts. However, the application of § 15-1-39 is limited in that the cause of action and the remedy of the case must be purely and exclusively equitable or the general 6-year statute of limitations will be applied. Wholey v. Cal-Maine Foods, Inc., 530 So. 2d 136, 1988 Miss. LEXIS 356 (Miss. 1988).

Once Wilson v. Garcia (1985) 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938, was decided, public was fairly on notice that in Mississippi one-year limitations period might well be chosen over 6-year limitations period as more appropriate period for actions under 42 USCS § 1983. Hanner v. Mississippi, 833 F.2d 55, 1987 U.S. App. LEXIS 15691 (5th Cir. Miss. 1987).

Even if § 15-1-49 was applicable to disciplinary proceedings against an attorney, it would not be a bar to an action against the attorney by the State Bar, where the Bar had no way of knowing of attorney's failure to establish a guardianship account. Pitts v. Mississippi State Bar Asso., 462 So. 2d 340, 1985 Miss. LEXIS 1845 (Miss. 1985).

A party who pled the ten-year statute of limitations in § 15-1-7 could not thereafter on appeal claim that she had sufficiently raised the general limitation statute of six years set forth in § 15-1-49. Estate of Miller v. Miller, 409 So. 2d 715, 1982 Miss. LEXIS 1862 (Miss. 1982).

A suit on a credit memorandum issued to plaintiff in 1958 was barred by the 6 year statute of limitations where the period for demand was not indefinite, where plaintiff made no attempt to use the credit between 1958 and 1972, and where it did not communicate with defendant at all concerning the credit between 1963 and 1972; nor was the statute of limitations tolled until defendant's successor corporation first qualified to do business in Mississippi where such contention was raised for the first time on appeal and there was no showing that consideration of such issue was necessary to prevent a miscarriage of justice. Valley Cement Industries, Inc. v. Midco Equipment Co., 570 F.2d 1241, 1978 U.S. App. LEXIS 11819 (5th Cir. Miss. 1978).

Mississippi's general statute of limitations is considered procedural and therefore applies to actions in Mississippi arising under laws of another jurisdiction. Bastoe v. Sterling Drug, Inc., 683 F. Supp. 586, 1988 U.S. Dist. LEXIS 3064 (S.D. Miss. 1988).

This section governed the tort aspect of an action alleging that a television set malfunctioned, causing a fire that destroyed most of plaintiffs' home, but was inapplicable to their breach of implied warranties claim; plaintiffs' negligence and strict liability in tort claims were not time-barred under this section, even though the television set had been manufactured and sold more than six years before the action was commenced, where there was no showing that plaintiffs knew or should have known of the alleged defect prior to the fire and the statute of limitations thus did not begin to run until the date of the fire. Maly v. Magnavox Co., 460 F. Supp. 47, 1978 U.S. Dist. LEXIS 15359 (N.D. Miss. 1978).

Although plaintiff's action for abuse of process and malicious prosecution was primarily based on his 1964 arrest and 1966 conviction for criminal contempt, where the prosecution against him was not finally dismissed until August, 1968, his cause of action accrued within six years prior to commencement of suit in September, 1969. Hyde Constr. Co. v. Koehring Co., 387 F. Supp. 702, 1974 U.S. Dist. LEXIS 11355 (S.D. Miss. 1974), modified in part and rev'd in part, 546 F.2d 1193, 1977 U.S. App. LEXIS 10056 (5th Cir. Miss. 1977), disapproved, Suthoff v. Yazoo County Industrial Dev. Corp., 722 F.2d 133, 1983 U.S. App. LEXIS 14245 (5th Cir. Miss. 1983).

A counterclaim for replevin of goods sold under a written conditional sales contract is governed by the 6-year statute of limitations. Paul O'Leary Lumber Corp. v. Mill Equipment, Inc., 332 F. Supp. 1144, 1970 U.S. Dist. LEXIS 11009 (S.D. Miss. 1970), aff'd, 448 F.2d 536, 1971 U.S. App. LEXIS 8001 (5th Cir. Miss. 1971).

Stockholder's action for redemption of corporate stock, which had been pledged as collateral to secure an indebtedness, and for an accounting would have been barred in six years after knowledge of the action of the corporation in claiming legal title thereto and retiring the stock. Hudson v. Belzoni Equipment Co., 203 Miss. 212, 33 So. 2d 796, 1948 Miss. LEXIS 252 (Miss. 1948).

41. — Insurance.

After a worker got a workers' compensation award against an employer, the three-year statute of limitations in Miss. Code Ann. § 15-1-49(1) barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because the worker and the estate waited 12 years after learning the employer had no insurance to assert the claim. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

Insured's action against an insurer for uninsured/underinsured motorist coverage, filed on September 26, 2008, was time-barred under Miss. Code Ann. § 15-1-49 because the statute of limitations began to run on November 30, 2004, the date a default judgment was entered against a driver, proving the driver was uninsured and the tortfeasor; the insured was aware of her damages on the date of the default judgment. Madison v. Geico Gen. Ins. Co., 49 So. 3d 1166, 2010 Miss. App. LEXIS 663 (Miss. Ct. App. 2010).

Insureds' claim for negligent misrepresentation, which alleged that their insurer's agent stated that the insureds did not need to purchase flood insurance, was time barred under the three-year limitations period in Miss. Code Ann. § 15-1-49 where the agent's alleged misstatements were uttered six years before the insureds filed suit. Leonard v. Nationwide Mut. Ins. Co., 499 F.3d 419, 2007 U.S. App. LEXIS 20947 (5th Cir. Miss. 2007), cert. denied, 552 U.S. 1310, 128 S. Ct. 1873, 170 L. Ed. 2d 745, 2008 U.S. LEXIS 3106 (U.S. 2008).

In a tort action against an insurer based on an agent's alleged oral misrepresentation as to payment terms, the limitations period of Miss. Code Ann. § 15-1-49 was not tolled because the insured had the written policy in hand and thus could not demonstrate that some affirmative act was done to prevent discovery of the actual terms. Wilbourn v. Equitable Life Assur. Soc'y of the United States, 998 So. 2d 439, 2007 Miss. App. LEXIS 501 (Miss. Ct. App. 2007), rev'd, 998 So. 2d 430, 2008 Miss. LEXIS 602 (Miss. 2008).

Insurer's right to subrogation under Miss. Code Ann. § 83-11-107 does not transform into a right to "equitable indemnification" merely because the limitations period in Miss. Code Ann. § 15-1-49 has run on its subrogation right, even where the limitations period expires owing to no fault of the insurer. Miss. Farm Bureau Cas. Ins. Co. v. Orme, 422 F. Supp. 2d 685, 2006 U.S. Dist. LEXIS 12674 (S.D. Miss. 2006).

Where the debtors filed suit against mortgage and insurance companies for breach of fiduciary duties and negligent mispresentation more than four years after receiving their mortgage loans, the case was barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49. Carter v. Citigroup, Inc., 938 So. 2d 809, 2006 Miss. LEXIS 366 (Miss. 2006).

Insurer of a passenger and an insured could not proceed on a claim for "equitable indemnification" against the insured to recover a sum paid to the passenger under an underinsured/uninsured motorist policy after he was struck by the insured's car; the insurer could proceed only on a claim of subrogation under Miss. Code Ann. § 83-11-107, but because the claim was barred by the statute of limitations in Miss. Code Ann. § 15-1-49, the insurer had no viable claim against the insured. Miss. Farm Bureau Cas. Ins. Co. v. Orme, 422 F. Supp. 2d 685, 2006 U.S. Dist. LEXIS 12674 (S.D. Miss. 2006).

Statute of limitations on an insured's claim for uninsured motorist benefits expired on August 8, 2003, where the insured admitted that she knew the alleged tortfeasor was uninsured on August 8, 2000, the date of the accident. As the insured never filed a claim against the insurer during that period, the insured's claim was now barred by the three-year statute of limitations. Fid. & Guar. Ins. Underwriters v. Sullivan, 2006 U.S. Dist. LEXIS 2527 (N.D. Miss. Jan. 11, 2006).

Plaintiffs' claim for fraud was barred by the statute of limitations in Miss Code Ann. § 15-1-49 because the policies plaintiffs bought from an insurance company explained the terms, and thus nothing prevented plaintiffs from discovering the terms of the policy pursuant to Miss. Code Ann. § 15-1-67 even if they were different from what the company and its agent represented. Parker v. Horace Mann Life Ins. Co., 949 So. 2d 57, 2006 Miss. App. LEXIS 374 (Miss. Ct. App. 2006), cert. denied, 949 So. 2d 37, 2007 Miss. LEXIS 108 (Miss. 2007).

Consumers' fraud action against lenders in their sale of credit insurance with consumer loans was barred by the three-year limitations period of Miss. Code Ann. § 15-1-49, and consumers failed to show evidence of an affirmative act of fraudulent concealment after the initial insurance sale, as required under Miss. Code Ann. § 15-1-67, in order to toll the limitations period. Liddell v. First Family Fin. Servs., 146 Fed. Appx. 748, 2005 U.S. App. LEXIS 18411 (5th Cir. Miss. 2005).

Claims brought by a number of borrowers against nondiverse employees of a lender arising from sales of credit insurance were time barred, as (1) the limitations period was not tolled under Miss. Code Ann. § 15-1-67 due to fraudulent concealment absent a fiduciary relationship between the employees and the borrowers and (2) the borrowers did not act with due diligence as required under § 15-1-67 or for application of the discovery rule under Miss. Code Ann. § 15-1-49(2), as the borrowers' loan documents disclosed all of the information concerning credit insurance that allegedly was misrepresented or concealed. Anderson v. City Fin. Co., 2003 U.S. Dist. LEXIS 25226 (S.D. Miss. July 11, 2003).

Insureds' claim against an individual insurance agent for fraudulent misrepresentation was barred by the three-year statute of limitations, and the statute of limitations was not tolled because the insureds presented no evidence of any affirmative acts of concealment by the agent ; moreover, if the insureds had read the policies, they would have known that the agents were not authorized to change the terms of the contract, and that the policies stated nothing about receiving retirement benefits at age 65. Smith v. Union Nat'l Life Ins. Co., 286 F. Supp. 2d 782, 2003 U.S. Dist. LEXIS 17783 (S.D. Miss. 2003).

Insured's claims related to an alleged one-time act or omission relating to the sale of the insurance policy in question and did not assert that the insurer was involved in continual unlawful acts, thus, the statute of limitations was not tolled, and the insured's suite was barred. Lady v. Jefferson Pilot Life Ins. Co., 241 F. Supp. 2d 655, 2001 U.S. Dist. LEXIS 24991 (S.D. Miss. 2001).

The six-year statute of limitations codified at 28 U.S.C.S. § 2415(a), rather than the three-year statute of limitations contained in this section, applied to an action by an insurance company to recover damages caused by the appellants' intentional act of arson that damaged property insured by it since the mortgagee was a federal agency and the insurance company sued as the subrogee of the federal agency. Durr v. American Nat'l Prop. & Cas. Co., 796 So. 2d 215, 2000 Miss. LEXIS 152 (Miss. 2000).

The statute of limitations barred causes of action for breach of contract, fraud, breach of duties of good faith and fair dealing and conspiracy asserted against an insurance company based upon the manner in which a series of health insurance policies were allegedly developed, advertised, marketed. Greco v. Torchmark Corp., 1999 U.S. Dist. LEXIS 17894 (N.D. Miss. Oct. 29, 1999).

An insurer was notified of a claim, which arose from an automobile accident between an insured and an uninsured motorist, well within the applicable 6-year statute of limitations set forth in § 15-1-49, even though the insurer was first notified of the accident approximately 6 ½ years after the date of the accident, where the insured was 17 years old when she was injured in the accident, and therefore, pursuant to § 15-1-59, the statute of limitations did not begin to run against her until she reached her 21st birthday. The policy and purpose behind the Uninsured Motorist Act is to provide the same protection to one injured by an uninsured motorist as that individual would have if injured by a financially responsible driver. Thus, since the insured's cause of action against the uninsured motorist was not barred, her claim against the insurer was viable; since uninsured motorist coverage was purchased, the insurer had an obligation to protect the insured as long as the claim against the uninsured motorist was permitted. Lawler v. Government Employees Ins. Co., 569 So. 2d 1151, 1990 Miss. LEXIS 534 (Miss. 1990).

Where owners of a television set sent it to be repaired, where, after it was repaired, it caught fire and damaged the owner's house, and where the owners executed a release and subrogation receipt to the insurance company, which later filed a complaint against the repair shop, suit against the repair shop was barred by § 15-1-49 on the basis that the statute of limitations began running against the owners on the claim on the day of the fire; moreover, the fact that the insurance company later became subrogated to the rights of the owners did not operate to extend the period within which the suit could be brought simply because the insurance company was substituted in the place of the owners and succeeded to their rights and remedies in their claim against the repair shop. Indiana Lumbermen's Mut. Ins. Co. v. Curtis Mathes Mfg. Co., 456 So. 2d 750, 1984 Miss. LEXIS 1886 (Miss. 1984).

42. —Real property, deeds, etc.

In a case in which the homeowner suffered recurring problems with flash flooding, which caused water to enter his home, the chancery court did not err in granting summary judgment in favor of the neighbors as the homeowner's claim against the neighbors was barred by the three-year statute of limitations because the latest date on which the homeowner discovered the injury was July 3, 2010 - the date of the second flooding incident; and the homeowner amended his suit to add the neighbors as defendants on April 29, 2014, well over three years later. Milam v. Kelly, — So. 3d —, 2019 Miss. App. LEXIS 361 (Miss. Ct. App. July 30, 2019).

In a case in which the homeowner suffered recurring problems with flash flooding, which caused water to enter his home, the continuing torts doctrine did not apply because the flooding of the homeowner's home constituted a continual ill effect, not a continual unlawful act. Milam v. Kelly, — So. 3d —, 2019 Miss. App. LEXIS 361 (Miss. Ct. App. July 30, 2019).

In a case in which the homeowner suffered recurring problems with flash flooding, which caused water to enter his home, the three-year statute of limitations was not tolled based on the doctrine of fraudulent concealment because the homeowner failed to present evidence showing that the neighbors were aware that their wooden fence and landscaping were the cause of the flash flooding; and the homeowner presented no evidence of an affirmative act by the neighbors to prevent the discovery of his claim. Milam v. Kelly, — So. 3d —, 2019 Miss. App. LEXIS 361 (Miss. Ct. App. July 30, 2019).

General three-year statute of limitations applied to appellant's claims for equitable distribution of certain property; the chancellor found that appellant failed to prove all of the necessary elements of a partnership and the statute of limitations began on the closing date of the property, and thus appellant's claims were barred by the statute of limitations. Carlson v. Brabham, 199 So. 3d 735, 2016 Miss. App.

LEXIS 32 (Miss. Ct. App.), cert. denied, 203 So. 3d 597, 2016 Miss. LEXIS 395 (Miss. 2016).

Mortgagor's wrongful foreclosure claim was time-barred under Miss. Code Ann. § 15-1-49 as it was filed 10 years after the foreclosure; Miss. Code Ann. § 15-1-7 applied to actions to recover land, not to actions for wrongful. foreclosure. Tenn. Props. Inc. v. Gillentine, 66 So. 3d 695, 2011 Miss. App. LEXIS 329 (Miss. Ct. App. 2011).

Summary judgment was properly granted to a trustee in a prior owner's action to set aside a warranty deed transfer and a trust six years later because the three-year statute of limitations in Miss. Code Ann. § 15-1-49 applied, rather than the ten-year period in Miss. Code Ann. § 15-1-7. Concealed fraud did not toll the limitations period since the instrument here was recorded as a matter of public record. McWilliams v. McWilliams, 970 So. 2d 200, 2007 Miss. App. LEXIS 779 (Miss. Ct. App. 2007), overruled, Lott v. Saulters, 133 So. 3d 794, 2014 Miss. LEXIS 53 (Miss. 2014).

Statute of limitations for Mississippi landowner's claims asserting due process taking violations, equal protection violations, and discrimination on account of race was Mississippi's 3-year residual statute of limitations. Taylor v. County of Copiah, 937 F. Supp. 573, 1994 U.S. Dist. LEXIS 20977 (S.D. Miss. 1994), aff'd, 51 F.3d 1042, 1995 U.S. App. LEXIS 8212 (5th Cir. Miss. 1995).

Ten-year limitation period of Code 1942, § 709, applies to a bill to set aside a deed and to hold grantee as trustee of the land for benefit of complainants, neither the three-year limitation period of Code 1942, § 729, nor the six-year period of this section [Code 1942, § 722] being applicable when accounting feature contained in bill is merely incidental. Burton v. Gibbes, 204 Miss. 248, 37 So. 2d 285, 1948 Miss. LEXIS 359 (Miss. 1948).

43. —Family relationships, heirships, estates.

Decedent's son was no mere debtor but rather an heir to the decedent's estate, properly brought into the estate matter through a waiver of service of process. The chancellor properly determined that recovery of $91,700 in loans made within three years prior to the executor's motion for accounting was not barred by the statute of limitations and, thus, the decedent's son either had to repay the estate or have his distributive share decreased by this amount. Kennedy v. Estate of Kennedy, 164 So. 3d 1033, 2014 Miss. App. LEXIS 545 (Miss. Ct. App. 2014), cert. denied, 166 So. 3d 38, 2015 Miss. LEXIS 309 (Miss. 2015).

Ward's petition against a guardian's girlfriend was properly within the statute of limitations because the ward filed the petition just a few months after discovering that the girlfriend potentially was involved in misusing his guardianship money. In re Guardianship of McClinton, 157 So. 3d 862, 2015 Miss. App. LEXIS 44 (Miss. Ct. App. 2015).

Miss. Code Ann. § 15-1-49 did not time-bar a disabled sister's misappropriation suit against her brother because her injuries were latent, under Miss. Code Ann. § 15-1-49(2), as he hid the injuries by using her mental status, his power of attorney over her, and his control of her finances, so the statute did not begin to run until she learned of her possible claim. Aldridge v. Aldridge, 168 So. 3d 1127, 2014 Miss. App. LEXIS 149 (Miss. Ct. App.), cert. denied, 152 So. 3d 1176, 2014 Miss. LEXIS 607 (Miss. 2014).

Though a 29-year-old alleged son filed a paternity action not to enforce his alleged father's child support obligations, but for the sole purpose of knowing his ancestry, the trial court properly dismissed the case as time-barred; whether Miss. Code Ann. §§ 93-9-9 or 15-1-49 was the applicable statute of limitations was immaterial, as under the former, his suit was time-barred when he turned 21, and under the latter, when he turned 24 (i.e., three years after he turned 21). Autrey v. Parson, 864 So. 2d 294, 2003 Miss. App. LEXIS 685 (Miss. Ct. App. 2003), cert. denied, 864 So. 2d 282, 2004 Miss. LEXIS 43 (Miss. 2004), cert. denied, 543 U.S. 831, 125 S. Ct. 216, 160 L. Ed. 2d 49, 2004 U.S. LEXIS 5831 (U.S. 2004).

Limitations period regarding a foreign conservator's action against a guardian alleging the unauthorized expenditure of an estate's funds did not begin running until the guardian filed his final accounting. United States Fid. & Guar. Co. v. Melson, 809 So. 2d 647, 2002 Miss. LEXIS 100 (Miss. 2002).

Section 15-1-25, which specifically states that a suit against an executor or administrator must be filed within 4 years of the qualification of the executor or administrator, is an example of the legislature carving out a specific statute of limitations period in order to preempt the general 6-year limitations, and therefore the specific statute of § 15-1-25 preempts the general statute of § 15-1-49. Townsend v. Estate of Gilbert, 616 So. 2d 333, 1993 Miss. LEXIS 112 (Miss. 1993).

The six-year statute of limitations is inapplicable to suits brought by illegitimates under § 91-1-15 whose cause of action accrued prior to July 1, 1981. In re Estate of Smiley, 530 So. 2d 18, 1988 Miss. LEXIS 333 (Miss. 1988).

General six-year statute of limitation applies to heirship proceedings where no specific statute of limitations was applicable. In re Heirship of McLeod, 506 So. 2d 289, 1987 Miss. LEXIS 2508 (Miss. 1987).

Action by illegitimate to be adjudicated son of deceased and to be allowed to share in estate which is brought within 3 years of July 1, 1981, date enactment of amendment of § 91-1-15 is timely, notwithstanding fact that suit is brought 14 years after death of deceased, so long as death occurred prior to July 1, 1981. Berry v. Berry, 463 So. 2d 1031, 1984 Miss. LEXIS 1830 (Miss. 1984), cert. denied, 474 U.S. 828, 106 S. Ct. 90, 88 L. Ed. 2d 73, 1985 U.S. LEXIS 3348 (U.S. 1985).

The motion of an illegitimate daughter of decedent seeking a declaration that she was his heir-at-law was not barred by the six-year statute of limitations set forth in § 15-1-49, even though it was filed more than six years after she had reached majority. Stevenson v. Daniels, 446 So. 2d 597, 1984 Miss. LEXIS 1651 (Miss. 1984).

In an action by an illegitimate child demanding that she be declared the heir of her natural father, capable of inheriting from him under the Mississippi laws of descent and distribution, the order entered in favor of the illegitimate daughter would be reversed and the suit dismissed where the time for bringing the action was six years from the date of the daughter's majority (§ 15-1-49) but the action was not commenced until 18 years after that date. Knight v. Moore, 396 So. 2d 31, 1981 Miss. LEXIS 1984 (Miss.), cert. denied, 454 U.S. 817, 102 S. Ct. 95, 70 L. Ed. 2d 86, 1981 U.S. LEXIS 3122 (U.S. 1981).

44. —Employment.

In an employment case in which a former employer filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss, any claim by a pro se former employee of wrongful termination was barred by the three-year statute of limitations in Miss. Code Ann. § 15-1-49; the employee filed his initial complaint on January 14, 2014, alleging that his former employer terminated his employment on July 1, 2008. De Graffenried v. Smithway Motor Xpress, Inc., — F. Supp. 3d —, 2014 U.S. Dist. LEXIS 176075 (N.D. Miss. Dec. 22, 2014).

Chancery court properly ruled that a teacher's claim for relief was barred by the statute of limitations because she failed to refile her complaint in chancery court until she again alleged a breach of contract and sexual discrimination as an original complaint; since the teacher failed to properly perfect an appeal of the school district's decision affirming her termination and to obtain federal ancillary jurisdiction over her state-law claim, no tolling of the statute of limitations occurred. Lacour v. Claiborne County Sch. Dist., 119 So. 3d 1128, 2013 Miss. App. LEXIS 481 (Miss. Ct. App. 2013).

Discriminatory discharge action under federal civil rights law (42 USCS § 1981) is not barred by one year statute of limitations for enumerated intentional torts, but is governed by residual statute of limitations which provides 6-year limitation period. Kozam v. Emerson Electric Co., 711 F. Supp. 313, 1989 U.S. Dist. LEXIS 4249 (N.D. Miss. 1989).

Section 15-1-49 was applicable to an employment discrimination action brought under 42 USCS §§ 1981, 1983. Walls v. Mississippi State Dep't of Public Welfare, 542 F. Supp. 281, 1982 U.S. Dist. LEXIS 12810 (N.D. Miss. 1982), aff'd in part and rev'd in part, 730 F.2d 306, 1984

U.S. App. LEXIS 23257 (5th Cir. Miss. 1984) but see Walls v. Mississippi State Dep't of Public Welfare, 730 F.2d 306, 1984 U.S. App. LEXIS 23257 (5th Cir. Miss. 1984).

Job discrimination case initiated under the civil rights statute was governed by Mississippi's catch-all statute providing a six-year limitation period. Truvillion v. King's Daughters Hospital, 614 F.2d 520, 1980 U.S. App. LEXIS 19127 (5th Cir. Miss. 1980).

The 6-year statute of limitations would be applied in an employment discrimination action brought under 42 USCS § 1981. Heath v. D. H. Baldwin Co., 447 F. Supp. 495, 1977 U.S. Dist. LEXIS 16111 (N.D. Miss. 1977).

In an employment discrimination action pursuant to 42 USC § 1981, the general six-year statute of limitations provided by § 15-1-49 rather than the contractual three-year statute of limitations provided by § 15-1-29 would be applicable even though a mere claim for back pay would ordinarily be governed by the three-year statute. Walton v. Utility Products, Inc., 424 F. Supp. 1145, 1976 U.S. Dist. LEXIS 13379 (N.D. Miss. 1976).

45. —Civil rights.

In an employment termination case alleging tort claims and claims under 42 U.S.C.S. § 1983 in which a former teacher's aide argued on appeal that Miss. Code Ann. § 15-1-49 should be tolled because in the first case, his appeal from the school board's decision to terminate his employment, the circuit court failed to rule on certain Miss. R. Civ. P. 60 motions, that could not toll the statutes of limitations for his claims. Davis v. Biloxi Pub. Sch. Dist., 43 So. 3d 1135, 2009 Miss. App. LEXIS 765 (Miss. Ct. App. 2009), cert. dismissed, 49 So. 3d 106, 2010 Miss. LEXIS 487 (Miss. 2010).

Eighth Amendment claims for equitable relief made under 42 U.S.C.S. § 1983 by death-sentenced inmates challenging their method of execution were barred by the three-year statute of limitations of Miss. Code. Ann. § 15-1-49 in that the claims accrued after completion of direct review or the date when the lethal injection statute of Miss. Code Ann. § 99-19-51 became effective and the limitations period was not tolled by Miss. Code Ann. § 15-1-67 or by equitable estoppel. Walker v. Epps, 550 F.3d 407, 2008 U.S. App. LEXIS 25327 (5th Cir. Miss. 2008), cert. denied, 558 U.S. 829, 130 S. Ct. 57, 175 L. Ed. 2d 45, 2009 U.S. LEXIS 5526 (U.S. 2009).

Federal civil rights action under 42 U.S.C.S. § 1983 was governed by the three-year statute of limitations under Mississippi's residual statute of limitations for personal injury actions, Miss. Code Ann. § 15-1-49; a plaintiff was required to file his complaint within three years of the date his action accrued or when he had a complete and present cause of action. Giles v. Stokes, 988 So. 2d 926, 2008 Miss. App. LEXIS 419 (Miss. Ct. App. 2008).

Federal civil rights action under 42 USCS § 1983 is governed by 3-year statute of limitations under § 15-1-49. James v. Sadler, 909 F.2d 834, 1990 U.S. App. LEXIS 14847 (5th Cir. Miss. 1990).

For actions in Mississippi brought under 42 USCS § 1983 accruing before Wilson v. Garcia (1985) 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938, appropriate limitations period shall be either (1) longer pre-Wilson period, commencing at time action accrued, or (2) post-Wilson one-year period, commencing with date of Wilson decision, whichever expires first. Hanner v. Mississippi, 833 F.2d 55, 1987 U.S. App. LEXIS 15691 (5th Cir. Miss. 1987).

The Mississippi six-year catch-all statute (Code § 15-1-49) controlled an action pursuant to 42 USCS § 1983 against a city, its police department and various policemen asserting deprivation of constitutional right to freedom from physical abuse and intimidation which action allegedly occurred when in the course of arresting and jailing the plaintiff two policemen hurled him head first into the concrete floor and wall of a cell. Morrell v. Picayune, 690 F.2d 469, 1982 U.S. App. LEXIS 24429 (5th Cir. Miss. 1982).

Six-year limitation period contained in § 15-1-49 applies to actions brought under 42 USCS § 1981. Jones v. Birdsong, 530 F. Supp. 221, 1980 U.S. Dist. LEXIS 17012 (N.D. Miss. 1980), aff'd, 679 F.2d

24, 1982 U.S. App. LEXIS 19001 (5th Cir. Miss. 1982).

The applicable statute of limitations for an action for the denial, under color of state law, of rights secured by the constitution and laws of the United States, where the wrongs complained of were an alleged abuse of the Mississippi statutory deannexation procedure, was Mississippi's catch-all statute providing a six-year limitation. Franklin v. Marks, 439 F.2d 665, 1971 U.S. App. LEXIS 11585 (5th Cir. Miss. 1971).

46. Corporations.

Where a shareholder allegedly entered into a settlement agreement based on fraud, the shareholder's claims against a corporate officer, a securities company, and others were time-barred because, inter alia, (1) the shareholder admitted that the shareholder became suspicious about the corporation's environmental liability as far back as 1993, and (2) an alleged "firm commitment letter" was not a guarantee that the securities company would underwrite the corporation's public offering upon which the shareholder could have relied. Pope v. Sorrentino, 992 So. 2d 1194, 2008 Miss. App. LEXIS 228 (Miss. Ct. App.), cert. denied, 997 So. 2d 924, 2008 Miss. LEXIS 531 (Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

A cause of action which accrued prior to July 1, 1989, would be controlled by six year statute of limitations. Gibson, Sept. 24, 1990, A.G. Op. #90-0681.

A refund of erroneously paid taxes may be made for taxes that were paid within three years prior to the date the petition seeking such refunds was filed with the board of supervisors. See Sections 27-73-3 and 15-1-49. Fortier, February 23, 1996, A.G. Op. # 96-0087.

Since there is no specific statute that prescribes the time within which a claim for a refund of erroneously paid taxes must be made, the three year period of limitation provided for in Section 15-1-49 applies. Reynolds, October 4, 1996, A.G. Op. #96-0689.

Backpay, to which a municipal employee is legally entitled pursuant to the personnel policies and procedures adopted by the mayor and commissioners of a city, can be paid at any time prior to the running of the applicable statute of limitations set out in Section 15-1-49. If the statute has run the city may not disregard such statute of limitations and may not compensate the employee with backpay. Twiford, November 1, 1996, A.G. Op. #96-0636.

If otherwise exempt property becomes subject to taxation by way of a lease or other arrangement with a private party, then the three- year limitation would be applicable to refunds relating to the overpayment of such taxes. Stark, Apr. 15, 2005, A.G. Op. 05-0116.

RESEARCH REFERENCES

ALR.

What constitutes a contract in writing within statute of limitations. 3 A.L.R.2d 809.

When statute of limitation commences to run against damage from overflow of land caused by artificial construction or obstruction. 5 A.L.R.2d 302.

Running of statute of limitations against claim for services rendered over extended period under indefinite employment not fixing time of payment. 7 A.L.R.2d 198.

Change in party after statute of limitations has run. 8 A.L.R.2d 6.

Failure to comply with statute requiring one involved in automobile accident to stop or report as affecting question as to suspension or tolling statute of limitations. 10 A.L.R.2d 564.

When limitation period begins to run against cause of action or claim for contracting of disease. 11 A.L.R.2d 277.

Enforcement of stock subscription after suit on note of subscriber is barred by statute of limitations. 11 A.L.R.2d 1380.

Claim of government against taxpayer (or one in privity with him) which is barred by lapse of time as available to defeat or diminish claim of taxpayer against government, or vice versa. 12 A.L.R.2d 815.

Limitation of actions for annulment of marriage. 52 A.L.R.2d 1163.

When statute of limitations begins to run against note payable on demand. 71 A.L.R.2d 284.

What statute of limitation covers action for indemnity. 57 A.L.R.3d 833.

What statute of limitations governs action for interference with contract or other economic relations. 58 A.L.R.3d 1027.

Statute of limitations in illegitimacy or bastardy proceedings. 59 A.L.R.3d 685.

Choice of law as to applicable statute of limitations in contract actions. 78 A.L.R.3d 639.

Products liability: what statute of limitation governs actions based on strict liability in tort. 91 A.L.R.3d 455.

When does statute of limitation begin to run upon an action by subrogated insurer against third-party tortfeasor. 91 A.L.R.3d 844.

Statute of limitations: running of statute of limitations on products liability claim against manufacturer as affected by plaintiff's lack of knowledge of defect allegedly causing personal injury or disease. 91 A.L.R.3d 991.

When statute of limitations begins to run as to cause of action for development of latent industrial or occupational disease. 1 A.L.R.4th 117.

What statute of limitations governs damage action against attorney for malpractice. 2 A.L.R.4th 284.

What statute of limitations governs action arising out of transaction consummated by use of credit card. 2 A.L.R.4th 677.

When statute of limitations begins to run as to cause of action for nuisance based on air pollution. 19 A.L.R.4th 456.

When statute of limitations begins to run upon action against attorney for malpractice. 32 A.L.R.4th 260.

Statute of limitations applicable to third person's action against psychiatrist, psychologist, or other mental health practitioner, based on failure to warn persons against whom patient expressed threats. 41 A.L.R.4th 1078.

Tolling of statute of limitations, on account of minority of injured child, as applicable to parent's or guardian's right of action arising out of same injury. 49 A.L.R.4th 216.

Time of discovery as affecting running of statute of limitations in wrongful death action. 49 A.L.R.4th 972.

Wrongful death: surviving parent's minority as tolling limitation period on suit for child's wrongful death. 54 A.L.R.4th 362.

Medical malpractice: statute of limitations in wrongful death action based on medical malpractice. 70 A.L.R.4th 535.

Validity and construction of statute terminating right of action for product-caused injury at fixed period after manufacture, sale, or delivery of product. 30 A.L.R.5th 1.

Attorney Malpractice – Tolling or Other Exceptions to Running of Statute of Limitations. 87 A.L.R.5th 473.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence – View that statute begins to run from time of occurrence of negligent act or omission. 11 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence – View that statute begins to run from time of occurrence of sustaining damage or injury and other theories. 12 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence – View that statute begins to run from time client discovers, or should have discovered, negligent act or omission – Statement of rule and application of rule to providing client with allegedly negligent advice or failing to advise. 13 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence – View that statute begins to run from time client discovers, or should have discovered, negligent act or omission – Application of rule to conduct of litigation and delay or inaction in conducting client's affairs. 14 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence – View that statute begins to run from time client discovers, or should have discovered, negligent act or omission – Application of rule to property, estate, corporate, and document cases. 15 A.L.R.6th 427.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions § 107.

CJS.

54 C.J.S., Limitations of Actions § 51.

Law Reviews.

1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

The DES Dilemma: An Analysis of Recent Decisions. 52 Miss. L. J. 199, March 1982.

1982 Mississippi Supreme Court Review: Miscellaneous. 53 Miss. L. J. 179, March 1983.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss. L.J. 49, March, 1985.

Abbott, Venue of transitory actions against resident individual citizens in Mississippi – Statutory revision could remove needless complexity. 58 Miss. L. J. 1, Spring, 1988.

Jackson, Legislative reform of statutes of limitations in Mississippi: proposed interpretations, possible problems. 9 Miss College LR 231, Spring 1989.

Litigation in Mississippi Today: A Symposium: Class Actions & Joinder in Mississippi, 71 Miss. L.J. 447, Winter, 2002.

Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

§ 15-1-51. Limitations of suits by and against the state, counties and municipal corporations.

Statutes of limitation in civil cases shall not run against the state, or any subdivision or municipal corporation thereof, except that any judgment or decree rendered in favor of the state, or any subdivision or municipal corporation thereof, shall not be a lien on the property of the defendant therein for a longer period than seven (7) years from the date of filing notice of the lien, unless an action is brought before the expiration of such time or unless the state or such subdivision or municipal corporation refiles notice of the lien. There shall be no limit upon the number of times that the state, or any subdivision or municipal corporation thereof, may refile such notices of lien.

The statutes of limitation shall run in favor of the state, the counties, and municipal corporations beginning at the time when the plaintiff first had the right to demand payment of the officer or board authorized to allow or disallow the claim sued upon. The provisions of this section shall apply to all pending and subsequently filed notices of liens.

HISTORY: Codes, 1892, § 2736; 1906, § 3096; Hemingway's 1917, § 2460; 1930, § 2291; 1942, § 721; Laws, 1991, ch. 503, § 1, eff from and after passage (approved April 3, 1991).

Cross References — Prohibition against revival of remedy barred by lapse of time or statute of limitation, see Miss. Const. Art. 4, § 97.

Statutes of limitation running against the state or any subdivision thereof, see Miss. Const. Art. 4, § 104.

When state may be sued, see § 11-45-1.

Suits by and against county, generally, see § 11-45-17.

Suits by and against municipality, generally, see § 11-45-25.

Immunity of state and its political subdivisions from liability and suit for torts and torts of employees, see §§ 11-46-1 et seq.

General powers of municipal corporation, see § 21-17-1.

Limitation of actions by State Tax Commission, see § 27-3-41.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Subdivisions within purview of statute.
3. Suits by State and its subdivisions.
4. —Suits between subdivisions.
5. Suits against State and its subdivisions.
6. Running of limitation period.

1. In general.

The statutes of limitation concerning adverse possession do not run against the state. Mississippi State Highway Com. v. New Albany Gas Systems, 534 So. 2d 204, 1988 Miss. LEXIS 544 (Miss. 1988).

Mere mistake, accident or ignorance of one not under disability is not sufficient to suspend the statute of limitations. Mitchell v. Magee, 51 So. 2d 198 (Miss. 1951).

Where bonds were purchased by a testator in 1916 and were to become due in 1936 and they were later bequeathed by the testator who died in 1939, without specific designation to his wife, and the wife died in 1948, leaving all her property to legatee, and neither the wife nor the legatee were aware of the existence of the bonds, an action by the legatee in 1949 was barred by the six-year statute of limitations. Mitchell v. Magee, 51 So. 2d 198 (Miss. 1951).

This section [Code 1942, § 721] is inapplicable to appeal, since the right of appeal exists only by virtue of the statutes which confer it. Town of Tutwiler v. Gibson, 117 Miss. 879, 78 So. 926, 1918 Miss. LEXIS 232 (Miss. 1918).

Adverse occupancy does not bar municipalities from right to remove obstructions from street. City of Lexington v. Hoskins, 96 Miss. 163, 50 So. 561, 1909 Miss. LEXIS 35 (Miss. 1909).

Exceptions in favor of sovereignty in matters of property on the application of the statute of limitations must be construed strictly against the sovereignty. Warren County v. Lamkin, 93 Miss. 123, 46 So. 497, 1908 Miss. LEXIS 86 (Miss. 1908).

Section 104, Const. 1890, suspended the running of the statute of limitations against counties or pending contracts, where the bar was not complete, as well as on future contracts. Board of Sup'rs v. Helton, 79 Miss. 122, 29 So. 820 (Miss. 1901).

2. Subdivisions within purview of statute.

In a case in which a husband and wife argued that an open-account claim by a collection agency for collection in the justice court was barred by a three-year statute of limitations, that argument failed. A circuit court correctly found that their unpaid bills were owed to a governmental entity, a general hospital, the hospital's accounts were assigned to the collection agency for collection purposes only, and the collection agency's claim was not time-barred pursuant to Miss. Code Ann. § 15-1-51. Laffitte v. Southern Fin. Sys., 30 So. 3d 1236, 2009 Miss. App. LEXIS 599 (Miss. Ct. App. 2009), cert. denied, 29 So. 3d 774, 2010 Miss. LEXIS 153 (Miss. 2010).

Hospital was a subdivision of state for purposes of its suit against doctor for unpaid rent, and was thus not subject to one-year statute of limitations; county board of supervisors and city board of aldermen passed resolutions authorizing purchase and lease of office by hospital for express purpose of recruiting doctors to county and city, and office was purchased and leased pursuant to local and private legislation. Murphree v. Aberdeen-Monroe County Hosp., 671 So. 2d 1300, 1996 Miss. LEXIS 61 (Miss. 1996).

A hospital which was jointly owned by a city and a hospital district, and was governed by a board of trustees jointly appointed by the city council and the county board of supervisors, was a "subdivision [of the state] or municipal corporation thereof" within the meaning and contemplation of Art 4, § 104 of the Mississippi Constitution and § 15-1-51. Thus, the 7-year period of limitations governing judgment liens set forth in § 15-1-47 was inoperative against the hospital. Enroth v. Memorial Hosp. at Gulfport, 566 So. 2d 202, 1990 Miss. LEXIS 432 (Miss. 1990).

The Yazoo-Mississippi delta levee district is within the statute [Code 1942, § 721] and § 104, Const. 1890. Adams v. Illinois C. R. Co., 71 Miss. 752, 15 So. 640, 1894 Miss. LEXIS 54 (Miss. 1894).

3. Suits by State and its subdivisions.

Statute of limitations did not apply to a school district's claim for a refund of oil and gas severance taxes because Miss. Const. art. IV, § 104 and Miss. Code Ann. § 15-1-51 provided that statutes of limitation in civil causes did not run against the state or its subdivisions. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588, 2013 Miss. LEXIS 71 (Miss. 2013).

Pursuant to § 15-1-51 and Miss. Const. Art. 4, § 104, the statute of limitations in civil cases does not run against the state, its political subdivisions, or municipal corporations thereof. Parish v. Frazier, 195 F.3d 761, 1999 U.S. App. LEXIS 29733 (5th Cir. Miss. 1999).

Where an underlying debt was owed to a community hospital, existing under §§ 41-13-10 et seq., the hospital was a subdivision of the state and the statute of limitations was inoperative against it. Parish v. Frazier, 195 F.3d 761, 1999 U.S. App. LEXIS 29733 (5th Cir. Miss. 1999).

Unless the city is barred by laches or estoppel, it has a right to have a building removed from its present location in the street. Brown v. Gulfport, 213 Miss. 457, 57 So. 2d 290, 1952 Miss. LEXIS 386 (Miss. 1952).

Laches cannot be set up as defense to suit by State revenue agent to collect penalties under anti-trust laws. Aetna Ins. Co. v. Robertson, 131 Miss. 343, 94 So. 7, 1922 Miss. LEXIS 263 (Miss. 1922), writ of error dismissed, 263 U.S. 673, 44 S. Ct. 5, 68 L. Ed. 500, 1923 U.S. LEXIS 2833 (U.S. 1923), cert. denied, 263 U.S. 698, 44 S. Ct. 5, 68 L. Ed. 512, 1923 U.S. LEXIS 2968 (U.S. 1923).

This section [Code 1942, § 721] applies to actions by the state for recovery of penalty under antitrust laws, and no statute of limitations runs against the state in such actions. Grenada Lumber Co. v. State, 98 Miss. 536, 54 So. 8, 1910 Miss. LEXIS 92 (Miss. 1910).

Ten-year statute will bar action of ejectment by county against lessee in possession of county land not devoted to public use, under void lease, for term of lease. Warren County v. Lamkin, 93 Miss. 123, 46 So. 497, 1908 Miss. LEXIS 86 (Miss. 1908).

Notwithstanding that the statute of limitations could not be invoked against counties, a lessee of sixteenth section school lands, in an action by the county denying the validity of the lease and seeking to oust him, in defense of his term and as against the county's claim to immediate possession, could show that the county had no title to convey him, having previously conveyed the term to another, and could set up the outstanding term of such other, which by reason of his adverse possession for ten years he had acquired at a time when counties were subject to statutes of limitations. Jones v. Madison County, 72 Miss. 777, 18 So. 87, 1895 Miss. LEXIS 33 (Miss. 1895).

4. —Suits between subdivisions.

Const. 1890 § 104 applies to suit by town against county to recover one-half of road tax collected on property within the town limits. Town of Crenshaw v. Panola County, 115 Miss. 891, 76 So. 741, 1917 Miss. LEXIS 276 (Miss. 1917).

5. Suits against State and its subdivisions.

Constitutional amendment prohibiting state from making payment on certain precivil war bonds did not toll statute of limitations for bringing claim on bonds, as enactment did not prohibit bondholder from bringing suit. Grant v. State, 686 So. 2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

Although state procured passage of constitutional amendment prohibiting payment of certain precivil war bonds, state was not equitably estopped from asserting that bondholders' action to recover on bonds was barred by statute of limitations, as amendment did not prohibit bondholders from bringing claim on bonds and, therefore, state did not induce bondholders to abstain from filing suit to protect their rights and collect duly owed debts. Grant v. State, 686 So. 2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

Statute of limitations for filing suit to collect on precivil war bonds began to run in favor of state when bondholders first had right to make demand on officer authorized by state to allow or disallow claims, even though constitutional amendment precluded payment on bonds, and, therefore, there was no state officer who could authorize claims. Grant v. State, 686 So. 2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

Since bondholders' action against state to recover on precivil war bonds was barred by statute of limitations, chancellor did not need to rule on constitutionality of constitutional amendment prohibiting payment on bonds, and chancellor's ruling that amendment was unconstitutional was impermissible advisory opinion. Grant v. State, 686 So. 2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

On state's motion for summary judgment in bondholders' action to recover on precivil war bonds, based on running of statute of limitations, chancellor could look beyond parties' pleadings to constitutional amendment prohibiting payment on bonds before making determination as to whether action was time barred. Grant v. State, 686 So. 2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

The six-year statute of limitations was applicable to the right of a teacher in an agricultural high school to demand payment of salary from the proceeds of bonds to be issued by the county and to compel issuance of such bonds by mandamus upon failure of the board of supervisors (which was not shown to have ever been advised of the existence of the obligation until suit was filed) otherwise to do so. Fuqua v. Board of Supervisors, 192 Miss. 6, 4 So. 2d 350, 1941 Miss. LEXIS 7 (Miss. 1941).

The failure of a statute, making it mandatory that a county having legal and undisputed outstanding warrants or other obligations and insufficient funds in the treasury to pay them, should at once prepare for and take up such warrants or other obligations from the proceeds of serial bonds issued for such purpose, to make reference therein to any statute of limitations did not have the effect of waiving, as to all obligations of a county incurred after its enactment, the provisions of this section [Code 1942, § 721] to the effect that statutes of limitations should begin to run in favor of the state, counties and municipal corporations at the time when the plaintiff first had the right to demand payment. Fuqua v. Board of Supervisors, 192 Miss. 6, 4 So. 2d 350, 1941 Miss. LEXIS 7 (Miss. 1941).

Orders on its treasurer in payment of work done on levees by the board of levee inspectors of Issaquena county, under the laws cited, are in their nature essentially county debts and not subject to the statute of limitations. Anderson v. Issaquena County, 75 Miss. 873, 23 So. 310, 1898 Miss. LEXIS 4 (Miss. 1898).

There is no statute to bar proceedings to enforce payment of claims against a county which have been allowed by the judgment of its authorities. Taylor v. Board of Sup'rs, 70 Miss. 87, 12 So. 210, 1892 Miss. LEXIS 107 (Miss. 1892); Klein v. Board of Supervisors, 54 Miss. 254, 1876 Miss. LEXIS 27 (Miss. 1876).

6. Running of limitation period.

Constitutional amendment prohibiting state from making payment on certain precivil war bonds did not toll statute of limitations for bringing claim on bonds, as enactment did not prohibit bondholder from bringing suit. Grant v. State, 686 So.

2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

Although state procured passage of constitutional amendment prohibiting payment of certain precivil war bonds, state was not equitably estopped from asserting that bondholders' action to recover on bonds was barred by statute of limitations, as amendment did not prohibit bondholders from bringing claim on bonds and, therefore, state did not induce bondholders to abstain from filing suit to protect their rights and collect duly owed debts. Grant v. State, 686 So. 2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

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On state's motion for summary judgment in bondholders' action to recover on precivil war bonds, based on running of statute of limitations, chancellor could look beyond parties' pleadings to constitutional amendment prohibiting payment on bonds before making determination as to whether action was time barred. Grant v. State, 686 So. 2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

A cause of action for damages resulting from the closure of a portion of a frontage road by the state highway commission accrued at the time the road was closed and the six-year statute of limitations prescribed by section 15-1-49 began to run at that time. Mississippi State Highway Com. v. Vaughey, 358 So. 2d 1307, 1978 Miss. LEXIS 2570 (Miss. 1978).

The dismissal by a former sheriff and tax collector of his action against the county for compensation for alleged services did not destroy the right of his assignee, who was to obtain a portion of any recovery, and since the assignee's right was dependent upon the right of his assignor, assignee's action should have been brought within six years from the date of the expiration of the term of office of the former sheriff and tax collector, and, where it was not, the claim was barred. Smith v. Copiah County, 232 Miss. 838, 100 So. 2d 614, 1958 Miss. LEXIS 337 (Miss. 1958).

Action against county by heirs of tax collector for commissions on collections brought within six years after filing and rejection of claim with board of supervisors, but more than six years after right to file claim accrued, held barred by limitations, in absence of evidence that heirs had been legally restrained from pursuing remedy within statutory period. Grenada County v. Nason, 174 Miss. 725, 165 So. 811, 1936 Miss. LEXIS 226 (Miss. 1936).

Patentee not entitled to refund until land commissioner cancels patent and presents it to auditor, and limitations do not begin to run until that time. Wilson v. Naylor, 116 Miss. 573, 77 So. 606, 1917 Miss. LEXIS 346 (Miss. 1917).

Judgment declaring tax title void, in suit to confirm, was final adjudication justifying presentation to auditor of claim for purchase-money, and only after auditor's refusal to issue a warrant in payment of the claim thus presented could suit be instituted against the state. Brown v. Ford, 112 Miss. 678, 73 So. 722, 1916 Miss. LEXIS 161 (Miss. 1916).

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As long as debt is owed to community hospital and is to be paid to community hospital, statute of limitations does not run and debt remains due and payable indefinitely but this favorable treatment cannot be used for benefit of private individual or firm and regular statute of limitations would apply once debt is assigned and statute begins to run from date debt was originally owed, not date of assignment of debt to private entity. Baker, June 24, 1993, A.G. Op. #93-0398.

It is not possible for an individual to acquire any rights through prescription or adverse possession nor can the county acquire a roadway easement against 16th section land by way of prescription. Wallace, Feb. 4, 2000, A.G. Op. #2000-0038.

Any attempt to require contract terms seeking to limit the liability of a private vendor or specifying a limitation period different than the general limitations period prescribed for contractual claims would be unenforceable. Thomas, Dec. 2, 2003, A.G. Op. 03-0629.

If a county board of supervisors determines that a demand made is barred by the applicable statute of limitations, it must assert that defense and is not authorized to pay the claim. Ross, Nov. 3, 2006, A.G. Op. 06-0562.

RESEARCH REFERENCES

ALR.

Limitation period as affected by requirement of notice or presentation of claim against governmental body. 3 A.L.R.2d 711.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions §§ 13, 14, 146, 392, 407.

4 Am. Jur. Trials, Statutes of Limitation § 14.

CJS.

54 C.J.S., Limitations of Actions §§ 24-26.

§ 15-1-53. Effect of running of statute of limitations against executor, administrator, guardian, or other trustee, as against beneficiary.

When the legal title to property or a right in action is in an executor, administrator, guardian, or other trustee, the time during which any statute of limitations runs against such trustee shall be computed against the person beneficially interested in such property or right in action, although such person may be under disability and within the saving of any statute of limitations; and may be availed of in any suit or actions by such person.

HISTORY: Codes, 1880, § 2694; 1892, § 2761; 1906, § 3123; Hemingway's 1917, § 2487; 1930, § 2297; 1942, § 727.

Cross References — Limitations applicable to action by ward against guardian, see § 15-1-27.

Executor's or administrator's duty to make title to land, see § 91-7-221.

Deeds of conveyance by executors and administrators, see § 91-7-223.

What actions survive to executors and administrators, see § 91-7-233.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Persons affected.

1. In general.

Mere existence of an aunt as a person with statutory standing to bring a wrongful-death suit did not prevent the application of the statute because the aunt had been neither appointed guardian nor authorized by the chancery court to bring an action on behalf of the deceased's children; the oldest child did not have a guardian appointed for who had the legal authority to bring a suit on her behalf, and thus, the savings clause remained in operation. Pioneer Cmty. Hosp. of Newton v. Roberts, 214 So. 3d 259, 2017 Miss. LEXIS 107 (Miss. 2017).

A ward's disability did not toll the statute of limitations in an action commenced by his guardian where the guardian was appointed some years before the cause of action arose. McCain v. Memphis Hardwood Flooring Co., 725 So. 2d 788, 1998 Miss. LEXIS 272 (Miss. 1998), overruled in part, Stockstill v. Gammill, 943 So. 2d 35, 2006 Miss. LEXIS 624 (Miss. 2006).

Section 15-1-53 does not apply to action alleging that deed of trust executed by mortgagor and its foreclosure are invalid because mortgagor was mentally incompetent, because by its terms, statute applies only where legal title to property or right in action is in conservator as opposed to ward, and right of action was at all times in mortgagor rather than conservator. Talbert v. Henderson, 688 F. Supp. 250, 1987 U.S. Dist. LEXIS 13869 (S.D. Miss. 1987).

Provisions of Miss. Code Annotated § 15-1-53 are not applicable where conservator was empowered merely to manage incompetent's property and affairs, and right of action to challenge execution of deed of trust and foreclosure pursuant to it remained at all times in incompetent. Talbert v. Henderson, 688 F. Supp. 250, 1987 U.S. Dist. LEXIS 13869 (S.D. Miss. 1987).

The statute [Code 1942, § 727] only applies where the legal title or right of action at law or in equity is in the guardian or trustee, and a mere equitable right in the beneficiary. Weir v. Monahan, 67 Miss. 434, 7 So. 291, 1889 Miss. LEXIS 66 (Miss. 1889).

2. Persons affected.

Savings clause in Miss. Code Ann. § 15-1-59 did not act to toll the statute of limitations regarding a judgment a ward's conservator obtained in divorce action against the ward's former husband. Under Miss. Code Ann. § 93-13-38 the right to pursue the action for money owed was in the conservator not the ward so the statute of limitations ran against conservator. Lewis v. Smith (In re Lewis), 110 So. 3d 811, 2013 Miss. App. LEXIS 122 (Miss. Ct. App. 2013).

This statute [Code 1942, § 727] has no application to the rights of remaindermen under a devise or grant in trust to take effect only after the termination of a particular estate until the rights of the remaindermen fall into possession. Reynolds v. Wilkinson, 119 Miss. 590, 81 So. 278, 1919 Miss. LEXIS 37 (Miss. 1919).

Remaindermen are not barred from securing cancellation of deed to the land under wrongful sale during life of life tenant. Clark v. Foster, 110 Miss. 543, 70 So. 583, 1915 Miss. LEXIS 68 (Miss. 1915).

The statute [Code 1942, § 727] begins to run against one to whom land is conveyed in trust for others from the time adverse possession is taken under claim of ownership, and when he is barred the beneficiaries he represents are barred. Nelson v. Ratliff, 72 Miss. 656, 18 So. 487, 1895 Miss. LEXIS 69 (Miss. 1895).

This provision does not apply to ordinary cases where the right is that of minors, to be asserted by the guardian in their names. Weir v. Monahan, 67 Miss. 434, 7 So. 291, 1889 Miss. LEXIS 66 (Miss. 1889).

Where a husband lends his wife's money as his own, the borrower not knowing it was hers until the debt was barred as to him, it is also barred as to her. Perry v. Ellis, 62 Miss. 711, 1885 Miss. LEXIS 130 (Miss. 1885).

RESEARCH REFERENCES

ALR.

Time of existence of mental incompetency which will prevent or suspend running of statute of limitations. 41 A.L.R.2d 726.

Appointment of guardian for incompetent or for infant as affecting running of statute of limitations against ward. 86 A.L.R.2d 965.

Fiduciary or confidential relationship as affecting estoppel to plead statute of limitations. 45 A.L.R.3d 630.

When statute of limitations commences to run on right of partnership accounting. 44 A.L.R.4th 678.

Medical malpractice statutes of limitation minority provisions. 71 A.L.R.5th 307.

Effect of appointment of legal representative for person under mental disability on running of state statute of limitations against such person. 111 A.L.R.5th 159.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 629 et seq.

CJS.

54 C.J.S., Limitations of Actions §§ 28-30.

§ 15-1-55. Effect of death of party before bar is complete.

If a person entitled to bring any of the personal actions herein mentioned, or liable to any such action, shall die before the expiration of the time herein limited therefor, such action may be commenced by or against the executor or administrator of the deceased person, after the expiration of said time, and within one year after the death of such person.

HISTORY: Codes, 1857, ch. 57, art. 18; 1871, § 2162; 1880, § 2683; 1892, § 2753; 1906, § 3113; Hemingway's 1917, § 2477; 1930, § 2298; 1942, § 728.

Cross References — Actions for injuries producing death, see § 11-7-13.

Time allowed to commence malpractice action on behalf of deceased person who died under disability, see § 15-1-36.

Effect of death of party to suit, see §§ 91-7-237 et seq.

JUDICIAL DECISIONS

1. In general.

Miss. Code Annotated § 15-1-59 does not place maximum durational limit on savings provision of § 15-1-7, as had Mississippi Legislature intended for savings clause in § 15-1-7 to have maximum duration it would have included such limit in § 15-1-7, as Legislature has in other statutes of limitations provisions, and further, § 15-1-59 is not statute of limitations. Talbert v. Henderson, 688 F. Supp. 250, 1987 U.S. Dist. LEXIS 13869 (S.D. Miss. 1987).

When a decedent dies in the last year in which a suit may be brought for his injury this provision adds a year after his death within which suit may be brought by his personal representatives. Triplett v. United States, 213 F. Supp. 887, 1963 U.S. Dist. LEXIS 7940 (S.D. Miss. 1963).

Where debtor dies before debt is barred this section [Code 1942, § 728] controls. Duffy v. Kilroe, 116 Miss. 7, 76 So. 681, 1917 Miss. LEXIS 281 (Miss. 1917).

The statute [Code 1942, § 728] allows suit to be brought within one year of the death of the party liable, and not within one year from the date of letters testamentary or of administration, as did § 2612 Code of 1871. Klaus v. Moore, 77 Miss. 701, 27 So. 612, 1900 Miss. LEXIS 16 (Miss. 1900); Hughston v. Nail, 73 Miss. 284, 18 So. 920, 1895 Miss. LEXIS 110 (Miss. 1895).

Death of the debtor does not interrupt the running of the statute of limitations, but since the personal representative cannot be sued for six months after grant of letters, this time should not be counted against the creditor. Allen v. Hillman, 69 Miss. 225, 13 So. 871, 1891 Miss. LEXIS 174 (Miss. 1891).

The personal representative of the deceased person must sue or be sued within one year after his death. Weir v. Monahan, 67 Miss. 434, 7 So. 291, 1889 Miss. LEXIS 66 (Miss. 1889).

As applying former enactment of this section [Code 1942, § 728] as contained in Code of 1871 wherein the limitation period did not begin to run until issuance of letters testamentary or of administration, see Hambrick v. Jones, 64 Miss. 240, 8 So. 176, 1886 Miss. LEXIS 53 (Miss. 1886); Cook v. Reynolds, 58 Miss. 243, 1880 Miss. LEXIS 116 (Miss. 1880); Sledge v. Jacobs, 58 Miss. 194, 1880 Miss. LEXIS 109 (Miss. 1880); Clayton v. Merrett, 52 Miss. 353, 1876 Miss. LEXIS 221 (Miss. 1876).

The statute [Code 1942, § 728] only applies to cases in which the death of the person occurred within the last year of the time limited. Hambrick v. Jones, 64 Miss. 240, 8 So. 176, 1886 Miss. LEXIS 53 (Miss. 1886).

RESEARCH REFERENCES

ALR.

Time from which statute of limitations begins to run against cause of action for wrongful death. 97 A.L.R.2d 1151.

Statute of limitations: Effect of delay in appointing administrator or other representative on cause of action accruing at or after death of person in whose favor it would have accrued. 28 A.L.R.3d 1141.

Defamation action as surviving plaintiff's death, under statute not specifically covering action. 42 A.L.R.4th 272.

Medical malpractice: statute of limitations in wrongful death action based on medical malpractice. 70 A.L.R.4th 535.

Am. Jur.

4 Am. Jur. Trials, Statutes of Limitation §§ 25, 26.

CJS.

54 C.J.S., Limitations of Actions § 286.

§ 15-1-57. Statute of limitations not to run when person prohibited to sue.

When any person shall be prohibited by law, or restrained or enjoined by the order, decree, or process of any court in this state from commencing or prosecuting any action or remedy, the time during which such person shall be so prohibited, enjoined or restrained, shall not be computed as any part of the period of time limited by this chapter for the commencement of such action.

HISTORY: Codes, 1857, ch. 57, art. 26; 1871, § 2170; 1880, § 2691; 1892, § 2758a; 1906, § 3120; Hemingway's 1917, § 2484; 1930, § 2307; 1942, § 737.

JUDICIAL DECISIONS

1. In general.

Statement of claim in a probate proceeding was timely filed because the stay entered by a federal circuit court, prohibiting the creditor from foreclosing on the encumbered property pending the appeal, began the tolling of the filing period as to the promissory note. Avakian v. Wilmington Trust N.A. (In re Estate of Avakian), 231 So. 3d 208, 2017 Miss. App. LEXIS 201 (Miss. Ct. App.), cert. denied, 229 So. 3d 122, 2017 Miss. LEXIS 492 (Miss. 2017).

Summary judgment was granted to an electric company in a property damage case because the statute of limitations was not tolled under Miss. Code Ann. § 15-1-57 since, from the date of an alleged incident until the expiration of the three-year statute of limitations, other parties were free to file their own claim or to join in the claim erroneously filed on behalf of a dissolved corporation. Miss. R. Civ. P. 15(c) did not allow for a reprieve from the limitations period because no amended complaint was filed; instead, an entirely new action with new parties was initiated. Funderburg v. Pontotoc Elec. Power Ass'n, 6 So. 3d 439, 2009 Miss. App. LEXIS 159 (Miss. Ct. App. 2009).

Second complaint filed by a patient in a medical malpractice action was not untimely because pursuant to Miss. Code Ann. §§ 15-1-36(15) and 15-1-57 the two-year statute of limitations was tolled for the 60 day period during which the patient was required to give notice of his claim to a doctor and medical center. Caldwell v. Warren, 2 So. 3d 751, 2009 Miss. App. LEXIS 63 (Miss. Ct. App. 2009).

Patient's medical malpractice claim was untimely filed, Miss. Code Ann. §§ 15-1-36(15) and 15-1-57 because the sixty-day notice period during which the patient was barred from filing suit extended the two-year statute of limitations by only sixty days, and the patient's complaint was filed after the sixty days had expired. Blessitt v. King's Daughters Hosp., 18 So. 3d 878, 2009 Miss. App. LEXIS 46 (Miss. Ct. App. 2009).

Circuit court erred in dismissing the doctor as a defendant from the beneficiaries' wrongful death claim where the time allowed by the medical malpractice statute of limitations had not yet expired when the doctor was served with the amended complaint. Long v. Mem'l Hosp. at Gulfport, 969 So. 2d 35, 2007 Miss. LEXIS 570 (Miss. 2007).

In a dispute involving a promissory note, an issue of which statute of limitations applied was not decided because the creditor never filed suit to foreclose on the note and never filed collection on the note; further, the savings clause, Miss. Code Ann. § 15-1-57, did not apply because that section applied only when a person was restrained or prohibited from bringing suit. Chimento v. Fuller, 965 So. 2d 668, 2007 Miss. LEXIS 543 (Miss. 2007).

Because the two-year statute of limitations in Miss. Code Ann. § 15-1-36(15) was extended 60 days pursuant to Miss. Code Ann. § 15-1-57, the individual's claim for malpractice against a medical center was timely when it was filed two years and 30 days after the date of injury. Scaggs v. GPCH-GP, Inc., 931 So. 2d 1274, 2006 Miss. LEXIS 313 (Miss. 2006).

In an appeal of dismissal of a medical malpractice case due to limitations, the judgment was reversed because it was timely filed within the statute of limitations; the most reasonable interpretation of Miss. Code Ann. § 15-1-36(15) and § 15-1-57 tolled the two-year statute of limitations for 60 days. Pope v. Brock, 912 So. 2d 935, 2005 Miss. LEXIS 540 (Miss. 2005).

Constitutional amendment prohibiting state from making payment on certain precivil war bonds did not toll statute of limitations for bringing claim on bonds, as enactment did not prohibit bondholder from bringing suit. Grant v. State, 686 So. 2d 1078, 1996 Miss. LEXIS 690 (Miss. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1047, 1997 U.S. LEXIS 3267 (U.S. 1997).

In a wrongful death action against the administrator of an estate arising from an automobile accident, the 4-year limitations period set forth in § 15-1-25 was not tolled pursuant to § 15-1-57 during the time that another suit stemming from the same accident was on direct appeal to the Supreme Court from an order granting a directed verdict where the plaintiff in the wrongful death action was not a party to the second suit, and did not have any involvement with it except that the plaintiff's decedent had been riding in the same automobile as the plaintiff's decedent in the second lawsuit; the order granting the directed verdict in the second case in no way prevented the plaintiff from filing his wrongful death cause of action. Townsend v. Estate of Gilbert, 616 So. 2d 333, 1993 Miss. LEXIS 112 (Miss. 1993).

Action for wrongful death brought by statutory heirs of decedent, alleging that decedent came into contact with toxic substances during his employment with defendant, resulting in his death, was time-barred where approximately 81/2 years elapsed between decedent's death and filing of present action; negligence actions being governed by § 15-1-49 (6 years), actions based on intentional infliction of emotional distress being controlled by § 15-1-35 (one year), and breach of warranty actions governed by § 75-2-725 (6 years), whether defendants' acts were characterized as intentional or negligent, longest possible limitations period under Mississippi law would be 6 years. Brown v. Dow Chemical Co., 777 F. Supp. 504, 1989 U.S. Dist. LEXIS 17546 (S.D. Miss.), aff'd, 889 F.2d 272, 1989 U.S. App. LEXIS 16794 (5th Cir. Miss. 1989).

Action by heirs of tax collector for commissions, brought within six years after filing and rejection of claim by supervisors, but more than six years after right to file claim accrued, held barred by limitations, in absence of showing that heirs had been legally restrained. Grenada County v. Nason, 174 Miss. 725, 165 So. 811, 1936 Miss. LEXIS 226 (Miss. 1936).

RESEARCH REFERENCES

ALR.

Delay caused by other litigation as estopping reliance on statute of limitations. 45 A.L.R.3d 703.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions §§ 195 et seq.

4 Am. Jur. Trials, Statutes of Limitation §§ 24 et seq.

CJS.

54 C.J.S., Limitations of Actions §§ 124 et seq.

§ 15-1-59. Saving in favor of persons under disabilities.

If any person entitled to bring any of the personal actions mentioned shall, at the time at which the cause of action accrued, be under the disability of infancy or unsoundness of mind, he may bring the actions within the times in this chapter respectively limited, after his disability shall be removed as provided by law. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than twenty-one (21) years.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 1 (7); 1857, ch. 57, art. 12; 1871, § 2156; 1880, § 2677; 1892, § 2746; 1906, § 3106; Hemingway's 1917, § 2470; 1930, § 2308; 1942, § 738; Laws, 1983, ch. 482, § 2, eff from and after July 1, 1983.

Cross References — Ratification of contracts made during infancy, see § 15-3-11.
Collateral attack by minor upon decree establishing title to property, see § 91-1-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Actions under Tort Claims Act.
4. Actions for child support.
5. Actions for wrongful death.

1. In general.

Because a conservator failed to create a genuine issue of material fact that the conservator's parent was mentally incompetent at the time when the cause of action for alleged the misappropriation of loan proceeds accrued, the savings clause did not apply. Specifically, a doctor only offered conclusory statements regarding the parent's health without citation to specific facts showing that the parent was of unsound mind at the time the cause of action accrued. Brown-Howle v. Cmty. Bank, — So. 3d —, 2018 Miss. App. LEXIS 527 (Miss. Ct. App. Oct. 23, 2018).

Trial court properly granted summary judgment in favor of a school and its team doctor because all alleged intentional torts occurred more than one year prior to alumni filing suit; the alumni did not timely file their intentional tort claims because the suit was filed seven years after the last alumnus graduated and more than three years after the last alumnus reached the age of majority. Raddin v. Manchester Educ. Found., 175 So. 3d 1243, 2015 Miss. LEXIS 507 (Miss. 2015).

Trial court improperly granted summary judgment, pursuant to Miss. R. Civ. P. 56, to a paint company with respect to a child's claims of injury resulting from ingestion of lead found in paint that the company manufactured because the child's claims were not barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49, as the child was a minor when the claims accrued, and therefore the claims were subject to the savings statute, Miss. Code Ann. § 15-1-59; because the child's claims were improperly dismissed, he was denied his right to a jury trial as set forth in Miss. Const. art. III, § 31, but the claims of the child's mother were properly dismissed as time-barred. Pollard v. Sherwin-Williams Co., 955 So. 2d 764, 2007 Miss. LEXIS 31 (Miss. 2007).

Where the mother entered into the relationship with the father when the mother was 14 years old and moved in with the father before the mother was 16 years old, the mother was not entitled to protection from the courts, as the mother's action for an equitable distribution of the property was not brought during the mother's minority or within three years thereafter pursuant to the savings clause for minors under Miss. Code Ann. § 15-1-59. Nichols v. Funderburk, 881 So. 2d 266, 2003 Miss. App. LEXIS 1036 (Miss. Ct. App. 2003), aff'd, 883 So. 2d 554, 2004 Miss. LEXIS 1198 (Miss. 2004).

Where plaintiff presented sufficient evidence on the issue of her unsoundness of mind to shift the burden of proof to defendant and a review of the testimony indicated that plaintiff was not in effective control of the day-to-day affairs of her family, the court could not rely on this evidence to support a finding that the tolling provisions of Miss. Code Ann. § 15-1-59 were inapplicable. Hampton v. Gannett Co., 296 F. Supp. 2d 716, 2003 U.S. Dist. LEXIS 22788 (S.D. Miss. 2003).

Trial court erred in ruling that the minor's savings statute, Miss. Code Ann. § 15-1-59, did not toll the statute of limitations on a wrongful death action; however, once a wrongful death suit was filed in her behalf, the minor no longer enjoyed the protection of § 15-1-59; since there could be but one cause of action under Miss. Code Ann. § 11-7-13, the minor was governed by the same statute of limitations as the decedent's administratrix. Lee v. Thompson, 859 So. 2d 981, 2003 Miss. LEXIS 407 (Miss. 2003).

Where a father entered into a stipulation to dismiss a driver from a negligence case with prejudice, his minor son was unable to assert the same cause of action against the driver when he reached the age of majority, under the doctrine of res judicata. Taylor v. Taylor, 835 So. 2d 60, 2003 Miss. LEXIS 26 (Miss. 2003).

Provisions of the minor's savings statute, Miss. Code Ann. § 15-1-59, and the wrongful death statute, Miss. Code Ann. § 11-7-13, conflict where there exists a person qualified under § 11-7-13 to bring suit, as § 11-7-13 requires that one suit be brought for damages from wrongful death. Thus, the statute of limitations runs against both the personal representative of the deceased and the deceased's children. Curry v. Turner, 832 So. 2d 508, 2002 Miss. LEXIS 391 (Miss. 2002), limited, overruled in part, Pioneer Cmty. Hosp. of Newton v. Roberts, 214 So. 3d 259, 2017 Miss. LEXIS 107 (Miss. 2017).

In a child support matter, more than seven years had passed since the eldest child had become 21; therefore, his claim was barred by the statute of limitations, but the claim of his sister was still viable, and the father did not waive the defense by failing to raise it as an affirmative defense in the pleadings when no pleading was required. Brown v. Brown, 822 So. 2d 1119, 2002 Miss. App. LEXIS 403 (Miss. Ct. App. 2002).

The minor savings clause applies to a wrongful death action. Thiroux v. Austin, 749 So. 2d 1040, 1999 Miss. LEXIS 351 (Miss. 1999).

The statute of limitations was not tolled for unsoundness of mind, notwithstanding evidence that the plaintiff received social security disability for schizophrenia, where the trial judge found that the plaintiff was capable of managing his own affairs, managed his own money, hired an attorney to file three lawsuits, and testified very coherently and competently at his discovery depositions. Brumfield v. Lowe, 744 So. 2d 383, 1999 Miss. App. LEXIS 348 (Miss. Ct. App. 1999).

The Mississippi Tort Claims Act's one year statute of limitations expressed in

§ 11-46-11 is not tolled by the "minor savings clause" of this section until the minor achieves majority. Marcum v. Hancock County Sch. Dist., 741 So. 2d 234, 1999 Miss. LEXIS 189 (Miss. 1999).

The statute applies to a proceeding to recover child support, whether the proceeding is commenced by the child, after emancipation, or by the custodial parent. Glass v. Glass, 726 So. 2d 1281, 1998 Miss. App. LEXIS 1109 (Miss. Ct. App. 1998).

Unadjudicated unsoundness of mind can be sufficient to trigger the savings statute; a legal adjudication of incompetency is not necessary to toll the statute of limitations if sufficient evidence exists to show that the victim was mentally incompetent at the time the cause of action accrued. Rockwell v. Preferred Risk Mut. Ins. Co., 710 So. 2d 388, 1998 Miss. LEXIS 127 (Miss. 1998).

Statute of limitations on mother's action to enforce foreign judgment against father for child support arrearage was tolled by minority of children, even though mother was not under disability of minority. Vice v. Department of Human Servs., 702 So. 2d 397, 1997 Miss. LEXIS 606 (Miss. 1997).

The limitation period provided by § 99-39-5(2) is not subject to the savings clause in § 15-1-59; the savings clause in § 15-1-59 applies only to actions mentioned in Chapter 1, Title 15 of the Mississippi Code of 1972. Cole v. State, 608 So. 2d 1313, 1992 Miss. LEXIS 557 (Miss. 1992).

An insurer was notified of a claim, which arose from an automobile accident between an insured and an uninsured motorist, well within the applicable 6-year statute of limitations set forth in § 15-1-49, even though the insurer was first notified of the accident approximately 6 ½ years after the date of the accident, where the insured was 17 years old when she was injured in the accident, and therefore, pursuant to § 15-1-59, the statute of limitations did not begin to run against her until she reached her 21st birthday. Lawler v. Government Employees Ins. Co., 569 So. 2d 1151, 1990 Miss. LEXIS 534 (Miss. 1990).

Statute of limitations, applicable to contempt action brought by divorced parent to enforce past due child support, is savings clause in favor of persons under disabilities (§ 15-1-59), not 7 year statute of limitations (§ 15-1-43), so long as child is minor. Wilson v. Wilson, 464 So. 2d 496, 1985 Miss. LEXIS 1914 (Miss. 1985).

In an action for wrongful death filed by the surviving spouse and children after the statutory limitation period had passed, § 15-1-59, the savings statute, did not toll the limitations period in favor of the children, since the surviving spouse was a person in esse who had the right to file suit for wrongful death during the six-year limitation period after decedent's death, and thus the action was barred. Arender v. Smith County Hospital, 431 So. 2d 491, 1983 Miss. LEXIS 2633 (Miss. 1983).

The general savings statute in favor of those under disabilities insofar as limitations of actions are concerned does not apply to the statute giving a widow the right to renounce her husband's will under certain circumstances. Wolcott v. Wolcott, 184 So. 2d 381, 1966 Miss. LEXIS 1459 (Miss. 1966).

Suit to set aside conveyance made during minority is barred where statutory period has run since grantor's majority. Floyd v. Floyd, 239 Miss. 69, 121 So. 2d 133, 1960 Miss. LEXIS 268 (Miss. 1960).

If unsoundness of mind of one suing for damages for assault and battery began before expiration of day of injury, limitations did not begin until removal of disability. Pannell v. Glidewell, 146 Miss. 565, 111 So. 571, 1927 Miss. LEXIS 197 (Miss. 1927).

Bill barred on its face by limitation is demurrable, although complainants sue by next friend where it is not alleged that complainants were minors. Thames v. Mangum, 87 Miss. 575, 40 So. 327, 1905 Miss. LEXIS 206 (Miss. 1905).

The statute [Code 1942, § 738] applies only to the actions mentioned in this chapter. Foster v. Yazoo & M. V. R. Co., 72 Miss. 886, 18 So. 380, 1895 Miss. LEXIS 40 (Miss. 1895).

Where a party is under two or more disabilities when a cause of action accrues, the statute will not begin to run until all be removed. North v. James, 61 Miss. 761, 1884 Miss. LEXIS 160 (Miss. 1884).

2. Applicability.

Although plaintiff alleged in this medical malpractice action that she had been of unsound mind since she was a child and that the circuit court erred in finding the evidence insufficient to establish that her mental condition tolled the statute of limitations, there was no evidence that plaintiff suffered from any kind of mental illness or that she had been found to be permanently disabled because of a mental illness. Vick v. Brandon HMA, LLC, 167 So. 3d 259, 2015 Miss. App. LEXIS 318 (Miss. Ct. App. 2015).

Savings clause did not act to toll the statute of limitations regarding a judgment a ward's conservator obtained in divorce action against the ward's former husband. Under Miss. Code Ann. § 93-13-38 the right to pursue the action for money owed was in the conservator not the ward so under Miss. Code Ann. § 15-1-53, the statute of limitations ran against conservator. Lewis v. Smith (In re Lewis), 110 So. 3d 811, 2013 Miss. App. LEXIS 122 (Miss. Ct. App. 2013).

3. Actions under Tort Claims Act.

Plaintiff's tort action based on events that occurred when he was 19 years old was timely as it was filed less than three years after his 21st birthday; removal of the disability of minority did not arise automatically upon the occurrence of specified events except for reaching the age of 21, and thus, plaintiff's emancipation did not trigger the automatic removal of disability of minority. Baker v. RR Brink Locking Sys., 721 F.3d 716, 2013 U.S. App. LEXIS 13884 (5th Cir. Miss. 2013).

The one (1) year statute of limitations of the Mississippi Tort Claims Act set forth in § 11-46-11 is not tolled by the minors' savings clause in this section. Hays v. Lafayette County Sch. Dist., 759 So. 2d 1144, 1999 Miss. LEXIS 376 (Miss. 1999).

This section's minor savings clause only applies to periods of limitation within this chapter and not to the Mississippi Torts Claims Act; thus, plaintiff failed to file her claim under the MTCA within the prescribed limitations period. Hays v. Lafayette County Sch. Dist., 759 So. 2d 1144, 1999 Miss. LEXIS 376 (Miss. 1999).

4. Actions for child support.

Registration of a child support order was timely because the three-year statute of limitations applicable to the father under Mississippi law was tolled while the child remained a minor. The tolling applied to the mother and the State, though neither was under such a disability, and the child was twelve years old in January, 1999. Shelnut v. Dep't of Human Servs., 9 So. 3d 359, 2009 Miss. LEXIS 125 (Miss. 2009).

Chancery court did not err in granting a wife an interest in a husband's retirement account to secure child support; thus, the statute of limitations on the wife's action based on a domestic judgment under Miss. Code Ann. § 15-1-43 was tolled by the child support exception of Miss. Code Ann. § 15-1-59 because the retirement funds, though put in the wife's name, were child support payments. Carlson v. Matthews, 966 So. 2d 1258, 2007 Miss. App. LEXIS 725 (Miss. Ct. App. 2007).

Limitations period under Miss. Code Ann. § 15-1-43 did not bar a contempt action to recover child support payments 12 years after a divorce decree was entered because the youngest child had until 2008 to bring the action under the savings clause of Miss. Code Ann. § 15-1-59. Strack v. Sticklin, 959 So. 2d 1, 2006 Miss. App. LEXIS 634 (Miss. Ct. App. 2006), cert. denied, 958 So. 2d 1232, 2007 Miss. LEXIS 371 (Miss. 2007).

Son was still a minor when the mother initiated the contempt action; thus, pursuant to Miss. Code Ann. § 15-1-59, the statute of limitations had not run on the father's child support obligations. It therefore followed that even if the father had obtained a ruling on his affirmative defense of laches, it would have availed him naught. Durr v. Durr, 912 So. 2d 1033, 2005 Miss. App. LEXIS 244 (Miss. Ct. App. 2005).

In a contempt proceeding for the husband's failure to pay child support, the affirmative defense of statute of limitations was not waived because, although the husband filed an answer, no such pleading was required under Miss. R. Civ. P. 12(b) and 81(d)(2), (4); thus, the husband had the right to raise the defense at any stage and the statute of limitations would bar any claims filed seven years after the youngest child reached the age of 21 pursuant to Miss. Code Ann. § 15-1-59. Miss. Dep't of Human Servs. v. Guidry, 830 So. 2d 628, 2002 Miss. LEXIS 320 (Miss. 2002).

5. Actions for wrongful death.

Under the holding in Pioneer Community Hospital of Newton v. Roberts, the appellate court found the minor savings statute, Miss. Code Ann. § 15-1-59, tolled the statute of limitations and prevented the dismissal of a minor's wrongful-death complaint against a psychiatrist who treated the minor's father. Irby v. Madakasira, 252 So. 3d 614, 2018 Miss. App. LEXIS 277 (Miss. Ct. App.), cert. denied, 250 So. 3d 1271, 2018 Miss. LEXIS 375 (Miss. 2018).

Only when someone who is qualified to bring a wrongful-death suit actually files a wrongful-death suit on the minor beneficiaries' behalf will the minors savings clause not apply, because, once the suit is filed, the running of the statute of limitations is immaterial. Pioneer Cmty. Hosp. of Newton v. Roberts, 214 So. 3d 259, 2017 Miss. LEXIS 107 (Miss. 2017).

To the extent the supreme court held in Curry v. Turner, 832 So. 2d 508 (Miss. 2002), that the mere existence of a person of majority age with statutory standing to file a wrongful-death suit prevents the application of the minors savings clause, the supreme court explicitly overrules this holding; instead, Curry should be limited to its facts. Pioneer Cmty. Hosp. of Newton v. Roberts, 214 So. 3d 259, 2017 Miss. LEXIS 107 (Miss. 2017).

To the extent Curry v. Turner, 832 So. 2d 508 (Miss. 2002), held that the mere existence of someone qualified to bring a wrongful-death suit created an irreconcilable conflict between Miss. Code Ann. § 11-7-13 and Miss. Code Ann. § 15-1-59 and precluded the application of the latter statute, the supreme court explicitly overrules this part of its holding. Pioneer Cmty. Hosp. of Newton v. Roberts, 214 So. 3d 259, 2017 Miss. LEXIS 107 (Miss. 2017).

Circuit court properly denied a hospital and a doctor summary judgment because the minors savings statute applied, and thus, the deceased's oldest child had two years from when she reached the age of majority to file a wrongful-death suit based on medical negligence; the deceased's two minor children could rely on the application of the minors savings clause to toll the running of the two-year statute of limitations, and the oldest child timely filed her complaint within two-year period. Pioneer Cmty. Hosp. of Newton v. Roberts, 214 So. 3d 259, 2017 Miss. LEXIS 107 (Miss. 2017).

Personal representatives' amended complaint against a convenience store in a wrongful death action was dismissed because the minor's savings statute, Miss. Code Ann. § 15-1-59, did not toll the general statute of limitations, Miss. Code Ann. § 15-1-49, which otherwise barred the wrongful death claim against the convenience store. Anderson v. R & D Foods, Inc., 913 So. 2d 394, 2005 Miss. App. LEXIS 294 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR.

Proof of unadjudged incompetency which prevents running of statute of limitations. 9 A.L.R.2d 964.

Appointment of guardian for incompetent or for infant as affecting running of statute of limitations against ward. 86 A.L.R.2d 965.

Effect of infant's marriage after cause of action accrues on running of limitations as against him or her. 91 A.L.R.2d 1272.

Tolling of statute of limitations, on account of minority of injured child, as applicable to parent's or guardian's right of action arising out of same injury. 49 A.L.R.4th 216.

Emotional or psychological "blocking" or repression as tolling running of statute of limitations. 11 A.L.R.5th 588.

Medical malpractice statutes of limitation minority provisions. 71 A.L.R.5th 307.

When Is Person, Other than One Claiming Posttraumatic Stress Syndrome or Memory Repression, Within Coverage of Statutory Provision Tolling Running of

Limitations Period on Basis of Mental Disability. 23 A.L.R. 6th 697.

Am. Jur.
51 Am. Jur. 2d, Limitation of Actions §§ 202 et seq.
4 Am. Jur. Trials, Statutes of Limitation § 24.

CJS.
54 C.J.S., Limitations of Actions §§ 131 et seq.

Law Reviews.
1983 Mississippi Supreme Court Review: Inapplicability of savings statute to wrongful death actions. 54 Miss. L. J. 169, March, 1984.

§ 15-1-61. Repealed.

Repealed by Laws of 1975, ch. 402, eff from and after July 1, 1975.

[Codes, 1892, § 2747; 1906, § 3107; Hemingway's 1917, § 2471; 1930, § 2309; 1942, § 739; Laws, 1888, p. 93.]

Editor's Notes — Former § 15-1-61 related to actions brought for assault, assault and battery, or maiming for persons in custody within one year after release.

§ 15-1-63. Effect of absence from the state.

If, after any cause of action has accrued in this state, the person against whom it has accrued be absent from and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action, after he shall return.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (11); 1857, ch. 57, art. 13; 1871, § 2157; 1880, § 2678; 1892, § 2748; 1906, § 3108; Hemingway's 1917, § 2472; 1930, § 2310; 1942, § 740.

Cross References — Limitations of prosecutions generally, see § 99-1-5.
Trial in absentia in criminal cases, see § 99-17-9.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Absence from state.
3. —Subsequent visits, effect of.
4. —Property within the state during absence.
5. Nonresidence.
6. Pleading.

1. In general.
Circuit court erred in dismissing a driver's personal injury complaint with prejudice because the driver exhibited good cause for not timely serving process on the insured where the record clearly showed that over a period of almost two years, the driver unsuccessfully attempted to locate the insured, the Secretary of State attempted to forward the summons to the insured, but it was returned unclaimed, the insured could not be located by the driver, the courts, or his own insurance carrier, and the circuit court failed to consider that the statute of limitations could be tolled. Darville v. Mejia, 184 So. 3d 312, 2016 Miss. App. LEXIS 3 (Miss. Ct. App. 2016).

A plaintiff seeking to benefit from § 15-1-63 must have been unable to effect service on the defendant during the period for which it is claimed the statute is tolled-i.e., the defendant must have left the state and not be amenable to service under a long-arm statute or other means because, for example, his or her whereabouts are unknown; the statute of limitations is not tolled where the plaintiff knew or should have known of the defendant's whereabouts. Sullivan v. Trustmark Nat'l Bank, 653 So. 2d 930, 1995 Miss. LEXIS 196 (Miss. 1995).

Under § 15-1-63, the burden of proving that the defendant was absent and not amenable to service is on the plaintiff. Sullivan v. Trustmark Nat'l Bank, 653 So. 2d 930, 1995 Miss. LEXIS 196 (Miss. 1995).

If a plaintiff can obtain process on a non-resident defendant, in a suit filed under the long arm statute, he will not be excused for his failure to sue and will not be entitled to claim that the statute of limitations is tolled during the absence of the defendant from the state; if a plaintiff makes such a claim, the burden is on him to show the duration of the defendant's absence from the state and to show that defendant cannot be served with process under any of the ways provided by the long arm statute. Gulf Nat'l Bank v. King, 362 So. 2d 1253, 1978 Miss. LEXIS 2162 (Miss. 1978).

A suit on a credit memorandum issued to plaintiff in 1958 was barred by the 6 year statute of limitations where the period for demand was not indefinite, where plaintiff made no attempt to use the credit between 1958 and 1972, and where it did not communicate with defendant at all concerning the credit between 1963 and 1972; nor was the statute of limitations tolled until defendant's successor corporation first qualified to do business in Mississippi where such contention was raised for the first time on appeal and there was no showing that consideration of such issue was necessary to prevent a miscarriage of justice. Valley Cement Industries, Inc. v. Midco Equipment Co., 570 F.2d 1241, 1978 U.S. App. LEXIS 11819 (5th Cir. Miss. 1978).

This section [Code 1942, § 740] applies only to actions in personam and does not apply to actions in rem. King v. Childress, 232 Miss. 766, 100 So. 2d 578, 1958 Miss. LEXIS 327 (Miss. 1958).

This section [Code 1942, § 740] is not applicable to suit at law or equity for recovery of land. Beresford v. Marble, 95 Miss. 461, 50 So. 68, 1909 Miss. LEXIS 299 (Miss. 1909).

The statute embraces all persons; there is no saving. Hodges v. Darden Bros., 51 Miss. 199, 1875 Miss. LEXIS 34 (Miss. 1875).

The reason of the exception is that during such absence the plaintiff cannot sue. If the right to sue be unimpaired, notwithstanding the absence, the case is not within this section [Code 1942, § 740]. French v. Davis, 38 Miss. 218, 1859 Miss. LEXIS 109 (Miss. 1859), overruled in part, Bluewater Logistics, LLC v. Williford, 55 So. 3d 148, 2011 Miss. LEXIS 64 (Miss. 2011).

2. Absence from state.

Tolling provision has never been applied to a defendant who was amenable to service of process simply because the defendant's alleged wrongful conduct was not known to the plaintiff; rather, the statute of limitations is tolled because, and only if, the defendant has removed himself or herself from the State and the reach of service of process. Hammons v. Navarre, — So. 3d —, 2017 Miss. App. LEXIS 215 (Miss. Ct. App. Apr. 18, 2017), aff'd, 252 So. 3d 9, 2018 Miss. LEXIS 252 (Miss. 2018).

Statute of limitations was not tolled because a pilot submitted no evidence sufficient to meet his burden of proof that manufacturers were not amenable to service during the limitations period; the pilot served or attempted service on all of the manufacturers soon after he filed his amended complaint. Hammons v. Navarre, — So. 3d —, 2017 Miss. App. LEXIS 215 (Miss. Ct. App. Apr. 18, 2017), aff'd, 252 So. 3d 9, 2018 Miss. LEXIS 252 (Miss. 2018).

Where an action on a promissory note was instituted in Mississippi and the note had been executed in Alabama, this statute [Code 1942, § 740] tolling the statute of limitations where there is an absence from the state was not applicable, for the absence relied on was from Alabama and not from Mississippi. Guthrie v. Merchants Nat'l Bank, 254 Miss. 532, 180 So.

2d 309, 1965 Miss. LEXIS 964 (Miss. 1965).

This statute [Code 1942, § 740] applies only where the cause of action accrues within the state of Mississippi and the person against whom it accrued thereafter absents himself, and does not apply where the cause of action accrued in another state and defendant thereafter moved to Mississippi. Le Mieux Bros. Corp. v. Armstrong, 91 F.2d 445, 1937 U.S. App. LEXIS 4253 (5th Cir. Miss. 1937).

Seven-year limitation for issuance of execution on judgment, not extended by absence of execution defendant from state, issuance of execution not being commencement of action. McGraw v. Mitchell, 142 Miss. 357, 107 So. 423, 1926 Miss. LEXIS 82 (Miss. 1926).

Phrase "be absent from and reside out of the state" applies to unmarried woman who went to California to work as domestic servant intending to return to the state after earning enough to pay off indebtedness on property. Hendricks v. Kellogg, 116 Miss. 22, 76 So. 746, 1917 Miss. LEXIS 288 (Miss. 1917).

A cause of action accrues in this state whenever one has a right of action in this state, and if the person against whom it has accrued be absent from and resides out of this state, the time of his absence is not counted in his favor in the suit here. Hunt v. Belknap, 78 Miss. 76, 28 So. 751, 1900 Miss. LEXIS 76 (Miss. 1900).

The statute [Code 1942, § 740] applies where defendant has not been in the state at all, as well as where the defendant resided here at the time the cause of action accrued and subsequently removed. Robinson v. Moore, 76 Miss. 89, 23 So. 631, 1898 Miss. LEXIS 66 (Miss. 1898); Lindenmayer v. Gunst, 70 Miss. 693, 13 So. 252, 1893 Miss. LEXIS 61 (Miss. 1893).

It is only where a right of action accrues in this state and the persons go from and reside out of it that the statute prevents the period of their absence from being counted. Lindenmayer v. Gunst, 70 Miss. 693, 13 So. 252, 1893 Miss. LEXIS 61 (Miss. 1893).

If he have no such residence here, and be absent, the section [Code 1942, § 740] applies, even though it be shown that the debtor had not acquired a domicil or fixed residence abroad. State v. Furlong, 60 Miss. 839, 1883 Miss. LEXIS 22 (Miss. 1883).

If the debtor have a home in this state, so that service of process can be had on him under our laws, by leaving with a member of his family or posting a copy, his absence on a trip abroad will not be within this section [Code 1942, § 740]. Dent v. Jones & Pintard, 50 Miss. 265, 1874 Miss. LEXIS 54 (Miss. 1874).

3. —Subsequent visits, effect of.

Where the defendant contracts a debt and removes to another state, and afterwards visits this state as a traveling salesman, going from place to place and staying only a day or two at each place, though while thus occupied he remained in the state continuously for several months, he is absent within the meaning of the statute. Weille v. Levy, 74 Miss. 34, 20 So. 3, 1896 Miss. LEXIS 101 (Miss. 1896).

A person who, after a cause of action accrues against him, removes and resides out of the state, is entitled to the benefit of the time spent here on subsequent visits which are open, notorious, and long enough for suit; but such person cannot claim that because of such visits his subsequent absences are to be disregarded. Pindell v. Harris, 57 Miss. 739, 1880 Miss. LEXIS 48 (Miss. 1880); Withers v. Bullock, 53 Miss. 539, 1876 Miss. LEXIS 111 (Miss. 1876).

4. —Property within the state during absence.

The fact that the debtor has property liable to attachment is immaterial; "the statute follows the person and not the property of the debtor." Fisher v. Fisher, 43 Miss. 212, 1870 Miss. LEXIS 27 (Miss. 1870).

5. Nonresidence.

Where a cause of action for labor and materials furnished to improve the defendant's property located in Mississippi accrued in this state and the defendant was a nonresident of Mississippi at the time of such accrual and remained a nonresident thereafter, the three-year statute of limitations did not run to bar the claim. Gross

v. Thomas, 187 So. 2d 307, 1966 Miss. LEXIS 1344 (Miss. 1966).

This section [Code 1942, § 740] is inapplicable where the cause of action accrued outside the state. C & L Rural Electric Co-op. Corp. v. Kincade, 175 F. Supp. 223, 1959 U.S. Dist. LEXIS 2934 (D. Miss. 1959), aff'd, 276 F.2d 929, 1960 U.S. App. LEXIS 4898 (5th Cir. Miss. 1960).

Where the construction required by a contract was to be performed in Arkansas and any breach thereof occurred at the construction site, this section [Code 1942, § 740] did not toll the limitation period. C & L Rural Electric Co-op. Corp. v. Kincade, 175 F. Supp. 223, 1959 U.S. Dist. LEXIS 2934 (D. Miss. 1959), aff'd, 276 F.2d 929, 1960 U.S. App. LEXIS 4898 (5th Cir. Miss. 1960).

Where the landowner had actual knowledge for ten years prior to the commencement of a suit, or by the use of reasonable prudence would have known, that the instrument she executed was a mineral deed rather than a royalty deed, and she could have brought action at any time within the ten-year period and obtained process upon the nonresident defendant by publication, the landowner's action was barred by the ten-year statute of limitations provided in § 709, Code of 1942. King v. Childress, 232 Miss. 766, 100 So. 2d 578, 1958 Miss. LEXIS 327 (Miss. 1958).

Where a judgment was rendered in Alabama against a nonresident of Mississippi on a cause of action which did not accrue in Mississippi, and the defendant thereafter became a resident of Mississippi, the statute of limitations ran from the date of the judgment rather than from the time the defendant became a resident of Mississippi. United States Fidelity & Guaranty Co. v. Ransom, 192 Miss. 286, 5 So. 2d 238, 1941 Miss. LEXIS 38 (Miss. 1941).

Limitation does not run in favor of nonresident maker of note and deed of trust on property in state. Mason v. Stroud, 155 Miss. 829, 125 So. 408, 1930 Miss. LEXIS 122 (Miss. 1930).

This section [Code 1942, § 740] applies only where person against whom cause of action accrues in the state removes and resides out of state; not applicable where nonresident alien corporation claimed adverse possession of land through tenants. Scottish American Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666, 1910 Miss. LEXIS 14 (Miss. 1910).

This statute [Code 1942, § 740] does not save the bar of a note made in another state where the limit is ten years, although both maker and payee resided there at the time and the maker did not become a resident of this state until nearly six years after maturity. Wright v. Mordaunt, 77 Miss. 537, 27 So. 640, 1899 Miss. LEXIS 97 (Miss. 1899).

The statute of limitations does not run during a debtor's absence from the state as a nonresident, and this rule is applicable, though the plaintiff be nonresident. Bower v. G. Henshaw & Sons, 56 Miss. 619, 1879 Miss. LEXIS 175 (Miss. 1879).

6. Pleading.

One relying on this statute must invoke it and plead the facts which make it applicable. Tinsley v. Mills, 36 F. Supp. 621, 1940 U.S. Dist. LEXIS 2161 (D. La. 1940).

RESEARCH REFERENCES

ALR.

Provision of statute of limitations excluding period of defendant's absence from the state as applicable to a local cause of action against individual who was a nonresident when the same arose. 17 A.L.R.2d 502.

Tolling of statute of limitations during absence from state as affected by fact that party claiming benefit of limitations remained subject to service during absence or nonresidence. 55 A.L.R.3d 1158.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions §§ 169 et seq.

CJS.

54 C.J.S., Limitations of Actions §§ 242, 243 et seq.

§ 15-1-65. Action barred in another jurisdiction barred here.

When a cause of action has accrued outside of this state, and by the laws of the place outside this state where such cause of action accrued, an action thereon cannot be maintained by reason of lapse of time, then no action thereon shall be maintained in this state; provided, however, that where such a cause of action has accrued in favor of a resident of this state, this state's law on the period of limitation shall apply.

HISTORY: Codes, 1880, § 2684; 1892, § 2754; 1906, § 3114; Hemingway's 1917, § 2478; 1930, § 2311; 1942, § 741; Laws, 1989, ch. 311, § 4, eff from and after July 1, 1989.

Editor's Notes — Laws, 1989, ch. 311, § 7, effective from and after July 1, 1989, provides as follows:

"SECTION 7. The provisions of this act shall apply only to causes of action accruing on or after July 1, 1989."

Cross References — Effect of completion of limitations, see § 15-1-3.

Actions on foreign judgments, see § 15-1-45.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Particular applications.

1. In general.

The doctrine of forum non conveniens will never be applied to dismiss a case if it is barred elsewhere by a statute of limitations, unless or until the defendant is willing to stipulate that he or she will waive the statute of limitations defense. Shewbrooks v. A.C. & S., Inc., 529 So. 2d 557, 1988 Miss. LEXIS 242 (Miss. 1988).

Section 15-1-65, which makes provision for nonresidents bringing suit on causes of action accruing in another state, applies only to a nonresident who moves to Mississippi after the statute has run on the cause in the other state. Shewbrooks v. A.C. & S., Inc., 529 So. 2d 557, 1988 Miss. LEXIS 242 (Miss. 1988).

In action brought in District Court in Mississippi, fact that statute of limitations of another state, which state has most significant relationship to occurrence and parties, is deemed procedural does not preclude application of Mississippi's "following statute", so as to make other state's one year limitations period applicable to products liability in negligence claims against seller of cash register. Jackson v. National Semi-Conductor Data Checker/DTS, Inc., 660 F. Supp. 65, 1986 U.S. Dist. LEXIS 17685 (S.D. Miss. 1986).

This statute [Code 1942, § 741] applies to a cause of action against a corporation as well as to individuals. Stavang v. American Potash & Chemical Corp., 227 F. Supp. 786, 1964 U.S. Dist. LEXIS 8326 (S.D. Miss. 1964), aff'd, 344 F.2d 117, 1965 U.S. App. LEXIS 5882 (5th Cir. Miss. 1965).

This provision applies only in favor of a nonresident who has moved into Mississippi after a cause of action against him is barred in his former state of residence; and when his removal was before it had become barred, the Mississippi statute of limitations applies. Sheets v. Burman, 322 F.2d 277, 1963 U.S. App. LEXIS 4269 (5th Cir. Miss. 1963).

Statute of Mississippi applies to right of action arising in another state and sued on in Mississippi. Fisher v. Burk, 123 Miss. 781, 86 So. 300, 1920 Miss. LEXIS 80 (Miss. 1920).

The sole purpose and effect of the statute are to give one suing in this state the benefit of a bar complete elsewhere. Wright v. Mordaunt, 77 Miss. 537, 27 So. 640, 1899 Miss. LEXIS 97 (Miss. 1899).

The statute [Code 1942, § 741] does not

apply if the defendant has never resided in this state. History of the statute given. Robinson v. Moore, 76 Miss. 89, 23 So. 631, 1898 Miss. LEXIS 66 (Miss. 1898).

Query, whether both parties must have resided in the state where the cause of action accrued until the bar of that state had attached. Robinson v. Moore, 76 Miss. 89, 23 So. 631, 1898 Miss. LEXIS 66 (Miss. 1898).

The statute [Code 1942, § 741] applies only where a nonresident in whose favor the statute had accrued afterwards removes into this state. Louisiana & M. R. T. Co. v. Long, 159 Miss. 654, 131 So. 84, 1930 Miss. LEXIS 358 (Miss. 1930); Louisville & N. R. Co. v. Pool, 72 Miss. 487, 16 So. 753, 1894 Miss. LEXIS 109 (Miss. 1894).

2. Particular applications.

Suit was not timely filed under Miss. Code Ann. § 15-1-49(1) because (1) that limitations period only applied if no other limitation period applied, and (2) Miss. Code Ann. § 15-1-65 prescribed a limitation period by applying the limitations period from the jurisdiction where the cause of action accrued. N. Am. Midway Entm't, LLC v. Murray, 200 So. 3d 437, 2016 Miss. LEXIS 386 (Miss. 2016).

It was error to deny a motion to dismiss alleged injured parties' personal injury suit because the cause of action accrued in Louisiana, where suit was time-barred, and, as a result, the suit was time-barred in Mississippi. N. Am. Midway Entm't, LLC v. Murray, 200 So. 3d 437, 2016 Miss. LEXIS 386 (Miss. 2016).

Summary judgment granted against two corporations licensed to do business in the State of Mississippi on the grounds that the State's three-year statute of limitations did not apply to an incident that occurred in the State because the corporations were foreign corporations was reversed because the two corporations should have been considered residents for purposes of invocation of the State statute of limitations, in much the same way as the corporations would be able to invoke the use of the Mississippi long arm statute, Miss. Code Ann. § 13-3-57. St. Paul Fire & Marine Ins. Co. v. Paw Paw's Camper City, Inc., 346 F.3d 153, 2003 U.S. App. LEXIS 20081 (5th Cir. Miss. 2003).

Mississippi statute of limitations would apply in action brought by Pennsylvania resident against manufacturer of farm combine, purchased in Pennsylvania, for injuries sustained in Pennsylvania while cleaning combine, since action was brought in District Court in Mississippi on grounds that manufacturer of combine was qualified to do business in Mississippi at time action accrued, and even though case was subsequently transferred to Pennsylvania. Ferens v. John Deere Co., 494 U.S. 516, 110 S. Ct. 1274, 108 L. Ed. 2d 443 (1990), on remand, 914 F.2d 242 (3d Cir. Pa. 1990), but see Varnado v. Danek Medical, Inc., (E.D. La. Aug. 19, 1998).

In action brought in District Court in Mississippi, fact that statute of limitations of another state, which state has most significant relationship to occurrence and parties, is deemed procedural does not preclude application of Mississippi's "following statute", so as to make other state's one year limitations period applicable to products liability in negligence claims against seller of cash register. Jackson v. National Semi-Conductor Data Checker/DTS, Inc., 660 F. Supp. 65, 1986 U.S. Dist. LEXIS 17685 (S.D. Miss. 1986).

Mississippi Code § 15-1-65 was inapplicable to Mississippi residents' common law action brought in Mississippi seeking to recover damages for injuries incurred in Louisiana while employed by an individual defendant and a corporate defendant which were subject to suit in Mississippi at the time of alleged accident causing the injuries. White v. Malone Properties, Inc., 494 So. 2d 576, 1986 Miss. LEXIS 2894 (Miss. 1986).

Where a cause of action arising in Kansas which would have been barred by the Kansas statute of limitations had the action been brought in Kansas was timely filed in Mississippi under Mississippi's statute of limitations against a defendant who was a nonresident of Mississippi, the Mississippi statute of limitations was appropriate where the Kansas statute of limitations was considered procedural rather than substantive by Kansas courts. Steele v. G. D. Searle & Co., 422 F. Supp. 560, 1976 U.S. Dist. LEXIS 12125 (S.D. Miss. 1976).

This statute did not apply in favor of persons who were residents of Mississippi at the time the cause of action accrued, even though the accrual took place in another state. Cummings v. Cowan, 390 F. Supp. 1251, 1975 U.S. Dist. LEXIS 13512 (N.D. Miss. 1975).

This section did not apply to an action arising out of an automobile accident which occurred in Mississippi, even though all of the parties and witnesses were residents of Alabama. Vick v. Cochran, 316 So. 2d 242, 1975 Miss. LEXIS 1705 (Miss. 1975).

Cause of action arising from breach of contract in another state is governed by Mississippi statute of limitations in which action thereon was brought where defendant had never resided in Mississippi. Fisher v. Burk, 123 Miss. 781, 86 So. 300, 1920 Miss. LEXIS 80 (Miss. 1920).

Mississippi statute of limitations controls in action in this state on note made in Ontario, Canada. Philp v. Hicks, 112 Miss. 581, 73 So. 610, 1916 Miss. LEXIS 150 (Miss. 1916).

This section [Code 1942, § 741] inapplicable to action against domestic railroad companies for personal injury inflicted in foreign state. New Orleans G. N. R. Co. v. Fortinberry, 107 Miss. 79, 64 So. 966, 1914 Miss. LEXIS 52 (Miss. 1914).

A railroad company operating a road in this state, and therefore suable as a resident here, cannot plead the statute against an action for stock killed in another state where the statute of limitations, if suit were there brought, would be a bar. Louisville & N. R. Co. v. Pool, 72 Miss. 487, 16 So. 753, 1894 Miss. LEXIS 109 (Miss. 1894).

RESEARCH REFERENCES

CJS.

54 C.J.S., Limitations of Actions § 43.

Law Reviews.

1987 Mississippi Supreme Court Review, Civil procedure. 57 Miss. L. J. 443, August, 1987.

Abbott, Venue of transitory actions against resident individual citizens in Mississippi – Statutory revision could remove needless complexity. 58 Miss. L. J. 1, Spring, 1988.

Jackson, Legislative reform of statutes of limitations in Mississippi: proposed interpretations, possible problems. 9 Miss. College LR 231, Spring 1989.

Litigation in Mississippi Today: A Symposium: Class Actions & Joinder in Mississippi, 71 Miss. L.J. 447, Winter, 2002.

§ 15-1-67. Effect of fraudulent concealment of cause of action.

If a person liable to any personal action shall fraudulently conceal the cause of action from the knowledge of the person entitled thereto, the cause of action shall be deemed to have first accrued at, and not before, the time at which such fraud shall be, or with reasonable diligence might have been, first known or discovered.

HISTORY: Codes, 1857, ch. 57, art. 14; 1871, § 2158; 1880, § 2679; 1892, § 2749; 1906, § 3109; Hemingway's 1917, § 2473; 1930, § 2312; 1942, § 742.

Cross References — Effect of fraud on right to bring action in equity, see § 15-1-9. Fraud in the probate of a will, see § 91-7-23.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. What constitutes concealed fraud, generally.
3. — Particular cases.
4. Notice or knowledge.
5. Reasonable diligence.
6. Persons affected.
7. Evidence.
8. Pleading.

1. In general.

Where lenders made a sufficient showing of affirmative acts by a borrower to conceal a fraud in the inducement claim, it was a matter for the jury to consider whether the claim was fraudulently concealed from the lenders until discovered. Whitaker v. Limeco Corp., 32 So. 3d 429, 2010 Miss. LEXIS 182 (Miss. 2010).

Trial court erred in granting summary judgment to a manufacturer of poultry houses and a general contractor, in a suit brought by farmers, because, under either an equitable-estoppel theory or the fraudulent-concealment exception of Miss. Code Ann. § 15-1-67, the application of Miss. Code Ann. § 15-1-41 could be barred. Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Clients' claim of fraudulent concealment was hollow where they presented no evidence to satisfy the test for fraudulent concealment; they offered no evidence to back up their bare assertion that the attorneys fraudulently concealed their alleged negligence, and the clients made no offering of any affirmative act designed to conceal a cause of action. Channel v. Loyacono, 954 So. 2d 415, 2007 Miss. LEXIS 223 (Miss. 2007).

Six-year limitation of Miss. Code Ann. § 15-1-41 is not affected by the date of accrual, and by extension not tolled by Miss. Code Ann. § 15-1-67; therefore, summary judgment was properly granted to a builder and a manufacturer in a property damage case arising from leaky roofs on chicken houses where a lawsuit was not filed until 2004, despite the fact that the leaks began shortly after completion in 1995 or 1996. Windham v. Latco of Miss., Inc., 972 So. 2d 652, 2007 Miss. App. LEXIS 49 (Miss. Ct. App. 2007), rev'd, 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Concealment statute does not affect the statute of repose as the statute of repose operates independently of causes of action and by its nature bars hidden claims and accruals of causes of action are irrelevant to its operation. Estes v. Bradley, 954 So. 2d 455, 2006 Miss. App. LEXIS 912 (Miss. Ct. App. 2006), overruled in part, Windham v. Latco of Miss., Inc., 972 So. 2d 608, 2008 Miss. LEXIS 44 (Miss. 2008).

Trustee alleged no specific affirmative act by the company to conceal the true amount of royalties owed the trust; thus, his claim of fraudulent concealment had no merit, and the statute of limitations was not tolled. Nygaard v. Getty Oil Co., 918 So. 2d 1237, 2005 Miss. LEXIS 422 (Miss. 2005).

Insureds simply made vaguely referenced misrepresentations and concealment attributable to the insurer without specifying any factual basis for those assertions. Therefore, the fraudulent concealment doctrine did not apply to the their fraud claims and summary judgment for the insurer was proper. Robinson v. Southern Farm Bureau Cas. Co., 915 So. 2d 516, 2005 Miss. App. LEXIS 967 (Miss. Ct. App. 2005).

To toll the limitation period, a plaintiff must prove that the defendant engaged in affirmative acts of concealment, that the plaintiff acted with due diligence in attempting to discover the claim, and that the plaintiff was unable to do so. Frye v. Am. Gen. Fin., Inc., 304 F. Supp. 2d 876, 2004 U.S. Dist. LEXIS 8489 (S.D. Miss.), amended, 307 F. Supp. 2d 836, 2004 U.S. Dist. LEXIS 19108 (S.D. Miss. 2004).

To avail themselves of the doctrine of fraudulent concealment to toll the running of the limitations period, plaintiffs have a twofold obligation to demonstrate that (1) some affirmative act or conduct was done and prevented discovery of a claim, and (2) due diligence was performed on their part to discover it. Anderson v. City Fin. Co., 2003 U.S. Dist. LEXIS 25226 (S.D. Miss. July 11, 2003).

Action by plaintiff against former employer for slander was time-barred where publication took place more than one year prior to institution of action, despite fact that plaintiff did not discover defamatory statements until more than one year after they were made. EEOC v. Southern Pub. Co., 732 F. Supp. 682, 1988 U.S. Dist. LEXIS 17306 (S.D. Miss. 1988).

A cause of action for malpractice does not accrue, so as to set the statute of limitations to running while the doctor concealed the facts from the patient. Sheets v. Burman, 322 F.2d 277, 1963 U.S. App. LEXIS 4269 (5th Cir. Miss. 1963).

The liability of an attorney for breach of duty attaches immediately upon the breach, and the statute of limitations begins to run then, unless there is fraudulent concealment of the cause of action, in which case it begins to run from its discovery, or from the time when reasonable diligence would have led to its discovery. Hudson v. Kimbrough, 74 Miss. 341, 20 So. 885, 1896 Miss. LEXIS 131 (Miss. 1896).

2. What constitutes concealed fraud, generally.

Death row inmates were not entitled to have the three-year statute of limitations for personal injury actions in Miss. Code Ann. § 15-1-49 tolled based upon fraudulent concealment under Miss. Code Ann. § 15-1-67 because there was no evidence that the State affirmatively concealed its protocol governing the manner in which it carried out executions or that the inmates were unaware that a 42 U.S.C.S. § 1983 action was the proper method for challenging the State's lethal injection protocol. Walker v. Epps, 587 F. Supp. 2d 763, 2008 U.S. Dist. LEXIS 53793 (N.D. Miss.), aff'd, 550 F.3d 407, 2008 U.S. App. LEXIS 25327 (5th Cir. Miss. 2008).

Affirmative act of fraudulent concealment must occur post-completion of the fraudulent act in order to toll the statute of limitations under Miss. Code Ann. § 15-1-67. Nat'l Union Fire Ins. Co. v. Blasio, 2008 U.S. Dist. LEXIS 42669 (N.D. Miss. May 23, 2008).

Growers failed to demonstrate any affirmative act on the part of the farm to conceal any information and did not provide any details of how the farm concealed its alleged fraudulent actions; merely alleging that the other side had complete control of the data would not suffice; the growers did not demonstrate any action by them to obtain any of the allegedly concealed information. Sanderson Farms, Inc. (Prod. Div.) v. Ballard, 917 So. 2d 783, 2005 Miss. LEXIS 660 (Miss. 2005).

Borrower's misrepresentation and negligence claims against a credit insurer's employee were time-barred under Miss. Code Ann. § 15-1-49 and the statute was not tolled because the borrower received, but did not read, copies of all pertinent documents, which clearly stated that credit insurance was optional. Bell v. Am. Gen. Fin., Inc., 267 F. Supp. 2d 582, 2003 U.S. Dist. LEXIS 10718 (S.D. Miss. 2003).

Any reliance plaintiffs may have placed on the oral statements of the loan agents regarding credit life insurance that were contradicted by the express language of the loan agreements was per se unreasonable, and such oral statements could not constitute fraudulent concealment. Agnew v. Wash. Mut. Fin. Group, LLC, 244 F. Supp. 2d 672, 2003 U.S. Dist. LEXIS 7380 (N.D. Miss. 2003).

To establish a claim of fraudulent concealment under Miss. Code Ann. § 15-1-67, plaintiffs must (1) show some act of an affirmative nature designed to prevent and which does prevent discovery of the claim, and (2) prove that even though they acted with due diligence in attempting to discover the claim, they were unable to do so. Ross v. Citifinancial, Inc., 2002 U.S. Dist. LEXIS 26733 (S.D. Miss. Mar. 18, 2002), amended, 2002 U.S. Dist. LEXIS 26740 (S.D. Miss. May 8, 2002), aff'd, 344 F.3d 458, 2003 U.S. App. LEXIS 18068 (5th Cir. Miss. 2003).

In order for a particular misrepresentation to constitute fraud which would toll the statute of limitations, it must be made under such circumstances, and be of such nature, that a reasonably prudent person would act thereon. Wilson v. Retail Credit Co., 325 F. Supp. 460, 1971 U.S. Dist. LEXIS 14248 (S.D. Miss. 1971), aff'd, 457 F.2d 1406, 1972 U.S. App. LEXIS 10066 (5th Cir. Miss. 1972).

Acts of fraud resulting in concealment of cause of action, to postpone its accrual until fraud shall be or might have been discovered, must be committed by defendants or someone in privity with them. Burton v. John Hancock Mut. Life Ins. Co., 171 Miss. 596, 157 So. 525, 158 So. 474, 1934 Miss. LEXIS 243 (Miss. 1934).

Where false representation as to acreage of tract is not fraudulently concealed by vendor after sale, purchaser's right of action for deceit accrues upon completion of sale induced by false representation. Dunn v. Dent, 169 Miss. 574, 153 So. 798, 1934 Miss. LEXIS 73 (Miss. 1934).

Cause of action of mortgagee against parties cashing check for award in condemnation proceeding was not concealed, and therefore extended, where mortgagee was served in proceeding but did not appear. Federal Land Bank v. Collins, 156 Miss. 893, 127 So. 570, 1930 Miss. LEXIS 233 (Miss. 1930).

Vendor's continuing false representations as to acreage after sale held fraudulent concealment tolling limitations. Lundy v. Hazlett, 147 Miss. 808, 112 So. 591, 1927 Miss. LEXIS 292 (Miss. 1927).

Fraudulent concealment of cause of action cannot be predicated upon open and public acts of defendant. Thornton v. Natchez, 88 Miss. 1, 41 So. 498, 1906 Miss. LEXIS 193 (Miss. 1906), writ of error dismissed, 212 U.S. 559, 29 S. Ct. 687, 53 L. Ed. 651, 1908 U.S. LEXIS 1574 (U.S. 1908).

Concealment of the cause of action for a libel contained in a letter sent by mail cannot be predicated upon any act of the writer at the place where the letter was mailed. McCarlie v. Atkinson, 77 Miss. 594, 27 So. 641, 1900 Miss. LEXIS 27 (Miss. 1900).

The sending of a libelous letter by mail does not alone constitute a concealment of its contents or publication. McCarlie v. Atkinson, 77 Miss. 594, 27 So. 641, 1900 Miss. LEXIS 27 (Miss. 1900).

Where the fraud itself is the basis of the right of action, unless a relation of trust and confidence exists between the parties, the defendant must have been guilty of some positive act of fraudulent representation or concealment directly towards the party injured. State v. Furlong, 60 Miss. 839, 1883 Miss. LEXIS 22 (Miss. 1883); Edwards v. Gibbs, 39 Miss. 166, 1860 Miss. LEXIS 39 (Miss. 1860); Buckner v. Calcote, 28 Miss. 432, 1855 Miss. LEXIS 1 (Miss. 1855), writ of error dismissed, 59 U.S. 243, 15 L. Ed. 348, 1855 U.S. LEXIS 693 (U.S. 1856).

Where the matter is of record, and the party complaining has the means of finding out the character of the transaction, the statute does not apply. Fleming v. Grafton, 54 Miss. 79, 1876 Miss. LEXIS 14 (Miss. 1876).

3. — Particular cases.

Tolling provision in this statute had no application because the causes of action for wrongful death, intentional infliction of emotional distress, and civil conspiracy were not concealed from an administrator; an attempt to beat a murder charge based on the actions alleged in the instant case did not prevent the administrator from discovering potential civil claims. Sharkey v. Barber, 188 So. 3d 1245, 2016 Miss. App. LEXIS 73 (Miss. Ct. App. 2016).

In a medical malpractice suit, the trial court properly denied summary judgment to defendant doctor based on the two-year statute of limitations because defendant's denial of participation in the patient's treatment could have constituted fraudulent concealment and ought to have tolled the statute of limitations until plaintiffs learned that an issue of fact existed regarding defendant's involvement. Holaday v. Moore, 169 So. 3d 847, 2015 Miss. LEXIS 206 (Miss. 2015).

Insurance policies were ambiguous where, in part, the definition of maturity date in the policies failed to explain that the payment of the planned premium would not be sufficient to keep the policy in effect to the maturity date; an issue of fact remained as to when the alleged fraud was consummated upon the insureds and whether the limitations period was tolled pursuant to Miss. Code Ann. § 15-1-67. Hicks v. N. Am. Co. for Life & Health Ins., 47 So. 3d 181, 2010 Miss. App. LEXIS 16 (Miss. Ct. App.), cert. denied, 49 So. 3d 1139, 2010 Miss. LEXIS 588 (Miss. 2010).

Although a buyer alleged that a software seller tried to conceal integration problems by blaming the buyer for customizing the software, and by trying to convince the buyer to upgrade to a newer version of the software, the buyer failed to demonstrate how the seller's alleged conduct could and did prevent the buyer from discovering its claim. Buyer could not reasonably rely on the representations it cited, and the record was simply absent of any evidence that it did. Peavey Elecs. Corp. v. Baan U.S.A., Inc., 10 So. 3d 945, 2009 Miss. App. LEXIS 194 (Miss. Ct. App. 2009).

Excess insurer's fraud and other tort claims against parties involved in settling medical malpractice claims against two doctors were barred under the limitations periods in Miss. Code Ann. §§ 15-1-35, 15-1-49, which were not tolled under Miss. Code Ann. § 15-1-67 because a letter from counsel for one of the doctors, which letter was written one year before the insurer filed suit, invited the excess insurer to discuss the withdrawal of the doctor's consent to settle, which the excess insurer alleged led to its payment obligations on behalf of another doctor whose primary coverage was exhausted, and counsel's letter did not attempt to conceal anything from the excess insurer. Nat'l Union Fire Ins. Co. v. Blasio, 2008 U.S. Dist. LEXIS 42669 (N.D. Miss. May 23, 2008).

Where a shareholder allegedly entered into a settlement agreement based on fraud, the shareholder's claims against a corporate officer, a securities company, and others were time-barred because, inter alia, (1) the shareholder admitted that the shareholder became suspicious about the corporation's environmental liability as far back as 1993, and (2) an alleged "firm commitment letter" was not a guarantee that the securities company would underwrite the corporation's public offering upon which the shareholder could have relied. Pope v. Sorrentino, 992 So. 2d 1194, 2008 Miss. App. LEXIS 228 (Miss. Ct. App.), cert. denied, 997 So. 2d 924, 2008 Miss. LEXIS 531 (Miss. 2008).

Chancery court properly dismissed a wife's motion for contempt and modification of a property settlement in a divorce proceeding where the wife's claim for modification of the property settlement was time-barred under the statute of limitations; because there was no evidence of any fraudulent concealment on the part of the husband regarding his 401(k) plan, the statute of limitations ran from the entry of the judgment of divorce. Shaw v. Shaw, 985 So. 2d 346, 2007 Miss. App. LEXIS 688 (Miss. Ct. App. 2007).

Where plaintiff borrowers alleged fraudulent and negligent inducement into purchasing credit insurance in connection with loans, but alleged no post-sale act concealing that arrangement subsequent to the loans, they were not entitled to tolling under Mississippi's fraudulent concealment statute, Miss. Code Ann. § 15-1-67, on the claims against defendant insurers, and all of the claims were time-barred under Miss. Code Ann. § 15-1-49(1) because the last loan was dated September 15, 1999, and the action was not filed until December 28, 2002. Jones v. Life of the S. Ins. Corp., 2006 U.S. Dist. LEXIS 1414 (S.D. Miss. Jan. 4, 2006).

Where the debtors filed suit against mortgage and insurance companies for breach of fiduciary duties and negligent mispresentation more than four years after receiving their mortgage loans, the case was barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49; fraudulent concealment did not toll the statute of limitations, and defendants did not take any affirmative actions which were designed to prevent discovery of the claims. Carter v. Citigroup, Inc., 938 So. 2d 809, 2006 Miss. LEXIS 366 (Miss. 2006).

Summary judgment was granted to an insurer and an agent in a fraud action relating to the purchase of life insurance because it was time-barred under Miss. Code Ann. § 15-1-49 since the claim should have been filed three years from the completion of the sale; moreover, there was no fraudulent concealment tolling the limitations period since the purchaser was not precluded from discovering her claim in the language of the policy. Warren v. Horace Mann Life Ins. Co., 949 So. 2d 770, 2006 Miss. App. LEXIS 423 (Miss. Ct. App. 2006).

Bank's claims against an insurer, including fraudulent inducement in the purchase of a policy, were dismissed as time-barred under Miss. Code § 15-1-49, because even if the bank had not examined the policy when it was purchased, or if its terms were not clear, the bank was put on notice that the single premium payment may not have been sufficient to keep the policy in force; neither the oral representations from the insurer's agent that a single payment would maintain the policy, the express assurances that payments were not due, nor the zero balance statements over six years constituted concealment to save the case pursuant to Miss. Code § 15-1-67. Peoples Bank Asset & Trust Mgmt. Dep't v. Great W. Life & Annuity Ins. Co., 2005 U.S. Dist. LEXIS 16752 (S.D. Miss. Feb. 7, 2005).

Summary judgment was granted to corporations' on fraudulent misrepresentation claims because the tolling provisions of Miss. Code Ann. § 15-1-67 were inapplicable, and thus individuals' claims were barred by the three year statute of limitation in Miss. Code Ann. § 15-1-49, where there was no evidence that the corporations engaged in affirmative acts of concealment that prevented the individuals from discovering their claims in a timely manner, in that the individuals' allegations instead focused on the corporations' alleged conduct prior to, and contemporaneous with, the purchase of the insurance policies. Bland v. Fleet Fin., Inc., 318 F. Supp. 2d 392, 2004 U.S. Dist. LEXIS 14997 (N.D. Miss. 2004).

Loans that were the subject of the individuals' complaint were all made in or before 1994, and yet the individuals filed suit on February 2, 2002, well over three years after the date of the last loan to any of the individuals, in violation of Miss. Code Ann. § 15-1-3. The individuals' causes of action did not survive because the individuals failed to identify fraudulent concealment by a bank employee which, had it occurred and been proven, could have defeated the time bar, pursuant to Miss. Code Ann. § 15-1-67. Stacher v. Am. Gen. Fin., Inc., 2003 U.S. Dist. LEXIS 18713 (S.D. Miss. Mar. 7, 2003).

Insureds' claim against an individual insurance agent for fraudulent misrepresentation was barred by the three-year statute of limitations, and the statute of limitations was not tolled because the insureds presented no evidence of any affirmative acts of concealment by the agent ; moreover, if the insureds had read the policies, they would have known that the agents were not authorized to change the terms of the contract, and that the policies stated nothing about receiving retirement benefits at age 65. Smith v. Union Nat'l Life Ins. Co., 286 F. Supp. 2d 782, 2003 U.S. Dist. LEXIS 17783 (S.D. Miss. 2003).

Borrower's misrepresentation and negligence claims against a credit insurer's employee were time-barred under Miss. Code Ann. § 15-1-49 and the statute was not tolled because the borrower received, but did not read, copies of all pertinent documents, which clearly stated that credit insurance was optional. Bell v. Am. Gen. Fin., Inc., 267 F. Supp. 2d 582, 2003 U.S. Dist. LEXIS 10718 (S.D. Miss. 2003).

In a suit arising out of the purchase of two insurance policies, an insured's claims against three insurance agents for fraud, suppression/omission, negligence, and negligent suppression were barred by the statute of limitations because the insured failed to prove an affirmative act of fraudulent concealment after completion of the insurance sales or that she acted with due diligence in attempting to discover her claims. Williams v. Union Nat'l Life Ins. Co., 2003 U.S. Dist. LEXIS 26332 (S.D. Miss. Sept. 25, 2003), vacated, 2004 U.S. Dist. LEXIS 27494 (S.D. Miss. Sept. 17, 2004).

Trial court did not err in dismissing a fraud and misrepresentation case against an insurer with prejudice because the claim was barred by the six-year statute of limitations in Miss. Code Ann. § 722 (1972); the cause of action was not tolled by Miss. Code Ann. § 15-1-67 because the insurer did nothing to prevent two insureds from discovering their cause of action. Stephens v. Equitable Life Assur. Soc'y of the United States, 850 So. 2d 78, 2003 Miss. LEXIS 117 (Miss. 2003).

In borrowers' suit arising from allegedly fraudulent loan transactions, agents were fraudulently joined and remand was not necessary, because the borrowers could not establish a cause of action against the agents in state court since the viable claims against the agents were time-barred and the statute of limitations was not tolled under the doctrine of fraudulent concealment. Ross v. First Family Fin.

Servs., Inc., 2002 U.S. Dist. LEXIS 23212 (N.D. Miss. Aug. 26, 2002).

The statute of limitations was not tolled with regard to the defendant's claim pertaining to an adjustment of retirement account funds that were in the plaintiff's name, where the defendant never alleged that the plaintiff fraudulently concealed any misdeeds and the record indicated that the defendant knew of each payment of retirement account funds on behalf of the plaintiff. Hall v. Dillard, 739 So. 2d 383, 1999 Miss. App. LEXIS 157 (Miss. Ct. App. 1999).

In order to toll the statute of limitations, the plaintiffs were required to prove that their son, who defrauded them while acting as their investment advisor, was in privity with the defendant financial services company or acting as an agent of that company. Smith v. Franklin Custodian Funds, Inc., 726 So. 2d 144, 1998 Miss. LEXIS 526 (Miss. 1998).

In a construction defect action, the plaintiff's allegation that the defendant fraudulently concealed construction deficiencies because "parts of the metal supports were covered by 2 X 8 wooden boards" and the "top concealed some of the faulty welds as well as insulation which covered other welding joints" did not constitute fraudulent concealment of a cause of action within the meaning of § 15-1-67. Reich v. Jesco, Inc., 526 So. 2d 550, 1988 Miss. LEXIS 307 (Miss. 1988).

The rules and regulations of a retail credit company and its agreements with its customers to keep its reports confidential did not amount to a fraud or the concealment of a fraud within the purview of this section [Code 1942, § 742], nor did the company have any duty or obligation to reveal the contents of its confidential reports to the person who was the subject of such report (but see 15 USC, § 1681q), and the period of limitation of any cause of action for libel based on such report would commence running at the time the report was received by the company's customer. Wilson v. Retail Credit Co., 438 F.2d 1043, 1971 U.S. App. LEXIS 11984 (5th Cir. Miss. 1971).

In a libel suit based on the contents of a credit report, the court was of the opinion that due to the qualified privilege of confidential credit reports made in good faith in the every day course of business, the fact that the contents of the report were not earlier revealed to plaintiff did not amount to a concealed fraud within the meaning of this section [Code 1942, § 742]. Wilson v. Retail Credit Co., 325 F. Supp. 460, 1971 U.S. Dist. LEXIS 14248 (S.D. Miss. 1971), aff'd, 457 F.2d 1406, 1972 U.S. App. LEXIS 10066 (5th Cir. Miss. 1972).

Where one of the parties to an agreement for the exchange of land failed to execute a deed to the property he exchanged, but the other party and her son moved thereon, the son continuing to occupy the land thereafter for many years and until the heirs of the first mentioned party brought an action in ejectment, the statute postponing the running of limitations until after the actual or constructive knowledge of concealed fraud was inapplicable, and would be inconsistent with the ten-year statute establishing title by adverse possession, since under the latter statute knowledge of an open, notorious and adverse possession may be presumed. Leggett v. Norman, 192 Miss. 494, 6 So. 2d 578, 1942 Miss. LEXIS 40 (Miss. 1942).

This section [Code 1942, § 742] did not apply to permit recovery for disability payments due more than six years before the commencement of an action therefor, where the insurer's refusal to pay them was based upon reasonable grounds for a difference of opinion and there was no fraudulent concealment or wilful misrepresentation. Columbian Mut. Life Ins. Co. v. Craft, 186 Miss. 234, 185 So. 225, 1938 Miss. LEXIS 323 (Miss. 1938).

Statement of agent for insurer who was not present at death of insured that insured died of heart disease, and beneficiary entitled to only indemnity for natural death, was statement of opinion and not misrepresentation on which could be predicated charge of fraud. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

Mere silence of insurer as to contents of proof of death which was submitted by beneficiary's physician who attended insured, did not constitute fraud which would toll running of statute of limitations, where beneficiary accepted amount payable for natural death and failed to make inquiry for approximately six years as to true facts of insured's death. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

No concealed fraud existed where a bank paid check to person other than drawer, believing forged endorsement to be genuine, and delivered cancelled check to drawer; limitations commenced running when bank rendered drawer statement showing check charged against it. Masonic Ben. Ass'n v. First State Bank, 99 Miss. 610, 55 So. 408, 1911 Miss. LEXIS 232 (Miss. 1911).

4. Notice or knowledge.

County was not entitled to dismissal of a civil rights claim alleging that the county through its former sheriff and deputy aided a campaign of violence of a white supremacist group by refusing to investigate and by covering up the commission of the murder of plaintiffs' relatives because the complaint sufficiently alleged a basis under Miss. Code Ann. § 15-1-67 for finding that plaintiffs' cause of action accrued within the three year limitations period when a federal investigation revealed the involvement of the sheriff and deputy and not when the bodies were discovered. Moore v. Franklin County, 638 F. Supp. 2d 703, 2009 U.S. Dist. LEXIS 55349 (S.D. Miss. 2009).

Eighth Amendment claims for equitable relief made under 42 U.S.C.S. § 1983 by death-sentenced inmates challenging their method of execution were barred by the three-year statute of limitations of Miss. Code. Ann. § 15-1-49 in that the claims accrued after completion of direct review or the date when the lethal injection statute of Miss. Code Ann. § 99-19-51 became effective and the limitations period was not tolled by Miss. Code Ann. § 15-1-67 or by equitable estoppel. Walker v. Epps, 550 F.3d 407, 2008 U.S. App. LEXIS 25327 (5th Cir. Miss. 2008), cert. denied, 558 U.S. 829, 130 S. Ct. 57, 175 L. Ed. 2d 45, 2009 U.S. LEXIS 5526 (U.S. 2009).

Where borrowers claimed that they were misled into believing that they needed to obtain credit life and disability insurance in order to obtain loans, the court found that the borrowers' claims, which accrued more than three years before the lawsuit was filed, were time-barred pursuant to Miss. Code Ann. § 15-1-49; tolling pursuant to Miss. Code Ann. § 15-1-67 was inapplicable because of affirmative disclosures made in the borrowers' loan applications and the Federal Disclosure Statements. Benson v. Am. Heritage Life Ins. Co., 2006 U.S. Dist. LEXIS 49851 (S.D. Miss. July 14, 2006).

Alleged sexual abuse victim failed to satisfy either prong of the fraudulent concealment test where she did not present any evidence showing that any party committed any act or conduct of an affirmative nature designed to prevent, and which did prevent, discovery of a claim; because the victim failed to satisfy either prong of the fraudulent concealment test, and because she was aware of the abuse, the statute of limitations was not tolled. Doe v. Roman Catholic Diocese, 947 So. 2d 983, 2006 Miss. App. LEXIS 435 (Miss. Ct. App. 2006), cert. denied, 2007 Miss. LEXIS 90 (Miss. Jan. 25, 2007).

In bank's suit alleging that an insurer acted fraudulently in representing that an insurance policy purchased by the bank for one of its trusts could be paid for with a single premium payment, the three-year statute of limitations in Miss. Code Ann. § 15-1-49 was not tolled by Miss. Code Ann. § 15-1-67, as the insurer did not do anything to prevent the bank from discovering that additional premium payments might be due, as was stated in the policy itself. Peoples Bank Asset & Trust Mgmt. Dep't v. Great W. Life & Annuity Ins. Co., 2005 U.S. Dist. LEXIS 16755 (S.D. Miss. Feb. 7, 2005).

Customers' claims that they were fraudulently induced by insurance company employees to purchase credit insurance policies in connection with consumer loans were barred by the three-year statute of limitations set forth in Miss. Code Ann. § 15-1-49 because all claims accrued at the time the loan agreements were executed because the customers were charged with notice where it was undisputed that each loan agreement contained an insurance disclosure which informed the borrower that credit insurance was not required and that the decision to make the loan would not be affected by the borrower's decision. The customers failed to establish or allege any fraudulent concealment, therefore the customers could not avail themselves of the tolling mechanism provided under Miss. Code Ann § 15-1-67. Andrus v. Ellis, 887 So. 2d 175, 2004 Miss. LEXIS 1343 (Miss. 2004).

In an action by Mississippi borrowers against an out-of-state lender and four Mississippi employees of the lender, the borrowers' myriad claims against the employees were barred by the three-year limitation period of Miss. Code Ann. § 15-1-49(1) and the employees had to be dismissed from the action, where the borrowers alleged that defendants had wrongfully induced the borrowers to buy credit insurance when the borrowers obtained their loans, and where Miss. Code Ann. § 15-1-67 did not toll the limitation period because the loan documents clearly showed that credit insurance was being purchased. Frye v. Am. Gen. Fin., Inc., 304 F. Supp. 2d 876, 2004 U.S. Dist. LEXIS 8489 (S.D. Miss.), amended, 307 F. Supp. 2d 836, 2004 U.S. Dist. LEXIS 19108 (S.D. Miss. 2004).

Where plaintiff borrowers raised claims, including a claim that the borrowers were wrongfully charged for credit insurance products provided by defendant insurers, the borrowers' claims were time-barred, as filed more than three years after the borrowers obtained their loans, and the statute was not tolled based on fraudulent concealment of the borrowers' claims under Miss. Code Ann. § 15-1-67, as the borrowers failed to plead or offer any proof of an affirmative act of fraudulent concealment post completion of the loan, nor did they plead or offer any proof that they acted with due diligence in attempting to discover their claims, further, with reasonable diligence, the borrowers would have discovered the alleged fraud on the date they obtained their loans, and the loan and credit insurance documents alone placed them on notice of the terms of their agreements, including the fact that credit insurance was not required. Queen v. Am. Gen. Fin., Inc., 289 F. Supp. 2d 782, 2003 U.S. Dist. LEXIS 24299 (S.D. Miss. 2003).

Contracting party was under a legal obligation to read a contract before signing it, and knowledge of the contents of a contract were imputed to a contract party even if he did not read the contract before signing it; therefore, the statute of limitations on a debtor's time-barred fraud and negligent misrepresentation claims against a lender's resident agents was not tolled by any reliance on the agents' alleged misrepresentations of the contract terms. Brumfield v. Pioneer Credit Co., 291 F. Supp. 2d 462, 2003 U.S. Dist. LEXIS 24347 (S.D. Miss. 2003).

Court reversed itself on a motion to remand because it had erred in concluding that the issue was whether subsequent fraudulent acts had occurred to toll the statute of limitations, when the issue was whether plaintiffs knew or should have known of the fraud, and because plaintiffs did know of the fraud by virtue of documents in their possession, the statute of limitations under Miss. Code Ann. § 15-1-76 was not tolled, and there was "no possibility" of recovery against the resident defendants. Rainwater v. Lamar Life Ins. Co., 246 F. Supp. 2d 546, 2003 U.S. Dist. LEXIS 2526 (S.D. Miss. 2003).

Under Miss. Code Ann. § 15-1-67, the statute of limitations on the fraudulent concealment claim was tolled where plaintiffs demonstrated reasonable diligence in failing to find the alleged fraud. Rainwater v. Lamar Life Ins. Co., 207 F. Supp. 2d 561, 2002 U.S. Dist. LEXIS 11924 (S.D. Miss. 2002), set aside, 246 F. Supp. 2d 546, 2003 U.S. Dist. LEXIS 2526 (S.D. Miss. 2003).

Where, there being no administration of a decedent's estate, the decedent's brother collected payment on a mortgage, owned by the decedent, and paid the amount received to the decedent's widow and son, the limitation statute applicable to cases of concealed fraud was not available in an action by the daughters of the decedent to recover from the brother's estate their share of the amount paid over by him to the wife and son, since there was no proof of any fraud and concealment, the mortgage had been recorded on the day of its execution, which was sufficient to put the daughters on notice of its existence, and everything that was thereafter done about it was at all times easily ascertainable by the daughters upon the exercise of any reasonable diligence. Rimmer v. Austin, 191 Miss. 664, 4 So. 2d 224, 1941 Miss. LEXIS 179 (Miss. 1941).

Notice to buyer of corporate bonds of default of corporation on coupons and of resulting organization of bondholders' protective committee held sufficient notice of falsity of seller's representations that bonds were safe investment to start running of three-year limitation under this section [Code 1942, § 742]. First Nat'l Bank v. Johnson, 177 Miss. 634, 171 So. 11, 1936 Miss. LEXIS 268 (Miss. 1936).

Statute [Code 1942, § 742] does not run against remainderman unless he knew purchaser from life tenant was claiming full fee. Belt v. Adams, 125 Miss. 387, 87 So. 666, 1921 Miss. LEXIS 127 (Miss. 1921).

The mere filing of a bill to cancel a deed, before service of summons on or publication for a defendant who has no actual notice thereof, is not such constructive notice of the fraud charged as will put in operation against him the statute in cases of concealed frauds. North American Trust Co. v. Lanier, 78 Miss. 418, 28 So. 804, 1900 Miss. LEXIS 81 (Miss. 1900).

5. Reasonable diligence.

Where plaintiff borrowers' action against defendant lenders, alleging wrongs committed in connection with loan transactions, was barred by Miss. Code Ann. § 15-1-49, because the loan documents disclosed all the information the borrowers contended was concealed, and yet they had never even read the documents, due diligence for tolling due to concealment under Miss. Code Ann. § 15-1-67 could not be found. Smith v. First Family Fin. Servs., 436 F. Supp. 2d 836, 2006 U.S. Dist. LEXIS 45930 (S.D. Miss. 2006).

Under Miss. Code Ann. § 15-1-67, plaintiff is not entitled to the benefits of tolling unless he proves that defendant engaged in affirmative acts of concealment and that even though he acted with due diligence in attempting to discover his cause of action, he was unable to do so. Mendrop v. Shelter Mut. Ins. Co., 2006 U.S. Dist. LEXIS 54783 (N.D. Miss. Aug. 4, 2006).

Plaintiffs' claim for fraud was barred by the statute of limitations in Miss Code Ann. § 15-1-49 because the policies plaintiffs bought from an insurance company explained the terms, and thus nothing prevented plaintiffs from discovering the terms of the policy pursuant to Miss. Code Ann. § 15-1-67 even if they were different from what the company and its agent represented. Parker v. Horace Mann Life Ins. Co., 949 So. 2d 57, 2006 Miss. App. LEXIS 374 (Miss. Ct. App. 2006), cert. denied, 949 So. 2d 37, 2007 Miss. LEXIS 108 (Miss. 2007).

Where investors alleged that investment companies were aware of their agent's conversion of the investors' funds before the criminal activity was publicly disclosed, fraudulent concealment did not apply to toll the statutes of limitation; after the agent's misconduct was discovered, the investors delayed filing their complaints against the companies until well after the limitations periods expired and there was no conduct of the companies that caused the investors' undue delay. Joe v. Minn. Life Ins. Co., 337 F. Supp. 2d 821, 2004 U.S. Dist. LEXIS 19281 (S.D. Miss. 2004).

Where state residents failed to plead or offer any proof of an affirmative act of fraudulent concealment post completion of the loan, and it was clear that with reasonable diligence the residents would have discovered the alleged fraud on the date they obtained their loans, the statute of limitations in Miss. Code Ann. § 15-1-67 was not tolled by fraudulent concealment. Frye v. Am. Gen. Fin., Inc., 307 F. Supp. 2d 836, 2004 U.S. Dist. LEXIS 19108 (S.D. Miss. 2004).

In an action arising from a fatal motor vehicle accident which was allegedly caused by the defendant chasing the decedents and causing them to crash into a truck, the defendant was not entitled to summary judgment on the ground that the statute of limitations expired prior to the commencement of the action. The plaintiffs alleged fraudulent concealment by the defendant and it was for the jury to decide whether the plaintiffs acted with due diligence in investigating the accident. Robinson v. Cobb, 763 So. 2d 883, 2000 Miss. LEXIS 170 (Miss. 2000).

Under Mississippi law, statute of limitations on insured's claims against life insurer arising out of alleged "churning" was not tolled by fraudulent concealment where insured had ample information at time he purchased second policy, and certainly by time he received his annual statement on original policy, that premiums on new policy were being paid by use of paid up value of old policy. Cunningham v. Massachusetts Mut. Life Ins. Co., 972 F. Supp. 1053, 1997 U.S. Dist. LEXIS 13964 (N.D. Miss. 1997).

The statute of limitations in a legal malpractice action was not tolled through fraudulent concealment even if the defendant attorney did fraudulently conceal his negligence since the plaintiffs, through the exercise of reasonable diligence, should have been able to discover the attorney's negligence more than 6 years prior to the date on which the complaint was filed where there was very little that the plaintiffs alleged in their complaint that they did not know 9 years before the malpractice suit was filed. Stevens v. Lake, 615 So. 2d 1177, 1993 Miss. LEXIS 73 (Miss. 1993).

A person claiming fraud as an excuse for nonaction within the statutory period must exercise reasonable diligence to discover the fraud sooner, or show that he could not with reasonable diligence have so discovered it. Wilson v. Retail Credit Co., 325 F. Supp. 460, 1971 U.S. Dist. LEXIS 14248 (S.D. Miss. 1971), aff'd, 457 F.2d 1406, 1972 U.S. App. LEXIS 10066 (5th Cir. Miss. 1972).

Where a cotenant who held a power of attorney from other cotenants sold timber on land of cotenancy and did not disclose the sale and deposited proceeds in his own bank account, the claim of other cotenants for accounting was not barred by the statute of limitations in view of this section [Code 1942, § 742] providing that a cause accrues when fraud is, or with reasonable diligence might have been discovered. Van Zandt v. Van Zandt, 227 Miss. 528, 86 So. 2d 466, 1956 Miss. LEXIS 722 (Miss. 1956).

Where agent of insurer under life policy containing double indemnity provision tendered check for benefit payable for natural death of insured and stated to beneficiary who was ignorant of circumstances of insured's death that such amount was all insurer owed beneficiary, the beneficiary's acceptance of such amount and delivery of policy to insurer and failure for six years to make inquiry as to circumstances of insured's death, did not constitute "reasonable diligence" to determine cause of insured's death so as to toll limitations until discovery of true facts. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

To extend period of limitation from date of discovery of fraud by which cause of action was concealed, plaintiff must exercise reasonable diligence to discover facts sooner, or show that he could not have done so. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

Statute [Code 1942, § 742] does not run against complainant exercising reasonable diligence until his discovery of fraud. J. K. Orr Shoe Co. v. Edwards, 111 Miss. 542, 71 So. 816, 1916 Miss. LEXIS 335 (Miss. 1916).

6. Persons affected.

Where trust deed to farm was executed by all of heirs except children of deceased daughter, and part of money advanced was used to discharge ancestor's trust deeds, right of assignee of trust deed to subrogation to trust deeds as to grandchildren's undivided interest was barred by six-year limitation, notwithstanding mortgagors' alleged fraudulent representation that grandchildren were not heirs, where grandchildren did not participate in fraud, and not being joint tenants, but tenants in common with mortgagors, were not their "privies;" term "privies" meaning those who stand in mutual or successive relationship to same rights of property. Burton v. John Hancock Mut. Life Ins. Co., 171 Miss. 596, 157 So. 525, 158 So. 474, 1934 Miss. LEXIS 243 (Miss. 1934).

7. Evidence.

In a case in which the homeowner suffered recurring problems with flash flooding, which caused water to enter his home, the three-year statute of limitations was not tolled based on the doctrine of fraudulent concealment because the homeowner failed to present evidence showing that the neighbors were aware that their wooden fence and landscaping were the cause of the flash flooding; and the homeowner presented no evidence of an affirmative act by the neighbors to prevent the discovery of his claim. Milam v. Kelly, — So. 3d —, 2019 Miss. App. LEXIS 361 (Miss. Ct. App. July 30, 2019).

For fraudulent concealment purposes, plaintiff bore the burden of proving that defendant engaged in affirmative acts of concealment and that plaintiff acted with due diligence in attempting to discover defendant's role but was not able to do so. Patel v. Hill-Rom Co., 194 So. 3d 898, 2016 Miss. App. LEXIS 432 (Miss. Ct. App. 2016).

Circuit court erred in granting a corporation and its president summary judgment based on its finding that the six-year statute of limitations had expired because an administrator presented sufficient evidence to establish the presence of a genuine issue of material fact as to whether the fraudulent concealment of escrow funds and the administrator's due diligence to discover that fraud tolled the six-year statute of limitations . Neyland v. Timberland Mgmt. Servs., 167 So. 3d 1272, 2014 Miss. App. LEXIS 614 (Miss. Ct. App. 2014), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 360 (Miss. 2015).

Since the homeowners' claims against an insurance agent were time-barred pursuant to Miss. Code Ann. § 15-1-49 and the homeowners had not shown that they were not entitled to the benefits of tolling under Miss. Code Ann. § 15-1-67, the insurance agent was fraudulently joined since the homeowners had no possibility of recovery against the agent; the homeowners' motion to remand the case was denied. Mendrop v. Shelter Mut. Ins. Co., 2006 U.S. Dist. LEXIS 54783 (N.D. Miss. Aug. 4, 2006).

Consumers' fraud action against lenders in their sale of credit insurance with consumer loans was barred by the three-year limitations period of Miss. Code Ann. § 15-1-49, and consumers failed to show evidence of an affirmative act of fraudulent concealment after the initial insurance sale, as required under Miss. Code Ann. § 15-1-67, in order to toll the limitations period. Liddell v. First Family Fin. Servs., 146 Fed. Appx. 748, 2005 U.S. App. LEXIS 18411 (5th Cir. Miss. 2005).

In borrowers' suit against lenders, insurers, and individuals, arising from loan transactions, removal was appropriate based upon diversity of citizenship because the individuals were fraudulently joined; the claims against the individuals were time-barred and the borrowers presented no evidence of affirmative acts of concealment by defendants for tolling the statute of limitations. Owens v. First Family Fin. Servs., 2003 U.S. Dist. LEXIS 25345 (S.D. Miss. May 29, 2003).

The statute of limitation was tolled with regard to an action arising from an oral agreement in a multimillion dollar oil and gas transaction since the defendant fraudulently concealed the truth regarding the agreement by making numerous false representations and swearing to them under oath. Allred v. Fairchild, 785 So. 2d 1064, 2001 Miss. LEXIS 143 (Miss. 2001).

Evidence, in action for double indemnity commenced more than eleven years after payment of benefit for natural death, held insufficient to justify judgment against insurer on ground of concealed fraud. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

In absence of proof of concealed fraud on part of insurer which would toll statute of limitations until discovery of true facts, action held barred by six-year statute. New York Life Ins. Co. v. Gill, 182 Miss. 815, 182 So. 109, 1938 Miss. LEXIS 197 (Miss. 1938).

In suit by purchaser for false representations as to acreage of tract sold, evidence failed to establish that vendor fraudulently concealed false representations after sale, and hence suit begun more than seven years after sale was barred. Dunn v. Dent, 169 Miss. 574, 153 So. 798, 1934 Miss. LEXIS 73 (Miss. 1934).

Evidence held to show that factor charging principal brokerage charges on lumber sold, but not showing them on statements rendered, except in one instance, when it was explained as "demurrage," which means delay, concealed cause of action for overcharges until shortly before bill was filed. D. S. Pate Lumber Co. v. Weathers, 167 Miss. 228, 146 So. 433, 1933 Miss. LEXIS 86 (Miss. 1933).

8. Pleading.

Plaintiff did not elaborate as to how or when he was able to discover that defendant had manufactured the bed in question, and thus there was insufficient information to conclude that anyone had concealed that fact, plus plaintiff offered no explanation as to why he could not sue defendant based on the information that was available; it was within the circuit court's discretion to deny plaintiff's request to amend his complaint, as he did not show that the statute of limitations was tolled due to fraudulent concealment, and his complaint was filed two years beyond the statute. Patel v. Hill-Rom Co., 194 So. 3d 898, 2016 Miss. App. LEXIS 432 (Miss. Ct. App. 2016).

In a case in which five car buyers brought their state law claims against an auto financier more than six years after their financing transactions, those claims were untimely. The claims were subject to the three-year limitations period in Miss. Code Ann. § 15-1-49(1), and the buyers could not toll the limitations period by using Miss. Code Ann. § 15-1-67 because they simply failed to allege a subsequent act of concealment separate from the alleged fraud underlying the cause of action. Archer v. Nissan Motor Acceptance Corp., 550 F.3d 506, 2008 U.S. App. LEXIS 25292 (5th Cir. Miss. 2008).

In a discriminatory lending suit filed by African American loan recipients against an auto financing corporation, the loan recipients' state law deceptive trade practices and common law claims were barred by the three-year statute of limitations in Miss. Code Ann. § 15-1-49(1), which was not tolled by the fraudulent concealment rule codified in Miss. Code Ann. § 15-1-67 because the loan recipients admitted that they knew the interest rates were high at the time they signed the loan documents, which clearly displayed the rates being charged. Archer v. Nissan Motor Acceptance Corp., 633 F. Supp. 2d 259, 2007 U.S. Dist. LEXIS 65570 (S.D. Miss. 2007), aff'd, 550 F.3d 506, 2008 U.S. App. LEXIS 25292 (5th Cir. Miss. 2008).

Child was killed by a water heater's explosion; while minimal, the mother's and sister's pleadings in a wrongful death action were factually particular enough to allege fraudulent concealment and to satisfy Miss. R. Civ. P. 9(b), and the circuit court's decision to deny a motion to dismiss was not an abuse of discretion. State Indus. v. Hodges, 919 So. 2d 943, 2006 Miss. LEXIS 17 (Miss. 2006).

Homeowners' predatory lending practices claims were time barred under Miss. Code Ann. § 15-1-49(1) because their respective transactions occurred well over the three years before the suit was brought and the homeowners failed to show any affirmative act of fraudulent concealment under Miss. Code Ann. § 15-1-67 to toll the statute of limitations. Carson v. McNeal, 375 F. Supp. 2d 509, 2005 U.S. Dist. LEXIS 13166 (S.D. Miss. 2005).

Insureds' fraud and misrepresentation claims arising out of the purchase of life insurance were dismissed pursuant to Fed. R. Civ. P. 12 (b)(6) because the action was barred by the statute of limitations, Miss. Code Ann. § 15-1-49, since the insureds did not allege that defendants engaged in any affirmative act or conduct that prevented the insureds from discovering their claims, which would have invoked the tolling provisions of the fraudulent concealment statute, Miss. Code Ann. § 15-1-67. O'Bannon v. Guardian Life Ins. Co. of Am., 331 F. Supp. 2d 476, 2004 U.S. Dist. LEXIS 24314 (S.D. Miss. 2004).

Federal district court refused to remand a suit alleging fraud in connection with sales of credit insurance, finding that claims brought by a number of borrowers against nondiverse employees of a lender were time barred, as (1) the limitations period was not tolled under Miss. Code Ann. § 15-1-67 due to fraudulent concealment absent a fiduciary relationship between the employees and the borrowers and (2) the borrowers did not act with due diligence as required under § 15-1-67, as the borrowers' loan documents disclosed all of the information concerning credit insurance that allegedly was misrepresented or concealed. Anderson v. City Fin.

Co., 2003 U.S. Dist. LEXIS 25226 (S.D. Miss. July 11, 2003).

Insurance purchasers sufficiently alleged in their complaint that an insurance agent engaged in affirmative acts of concealment that prevented the purchasers from discovering their cause of action until the limitations had expired; however, the purchasers alleged specific facts that, if proven, made it reasonably possible for a state court to toll the statute of limitations period. Reed v. Am. Gen. Life & Accident Ins. Co., 192 F. Supp. 2d 641, 2002 U.S. Dist. LEXIS 11405 (N.D. Miss. 2002).

Party averring concealed fraud must prove facts justifying his claim. Gordon v. Anderson, 90 Miss. 677, 44 So. 67, 1907 Miss. LEXIS 109 (Miss. 1907).

RESEARCH REFERENCES

ALR.

Effect of fraud to toll the period for bringing action prescribed in statute creating the right of action. 15 A.L.R.2d 500.

When statute of limitations or laches commences to run against action to set aside conveyance or transfer in fraud of creditors. 100 A.L.R.2d 1094.

Fraud, misrepresentation, or deception as estopping reliance on statute of limitations. 43 A.L.R.3d 429.

Fiduciary or confidential relationship as affecting estoppel to plead statute of limitations. 45 A.L.R.3d 630.

When statute of limitations commences to run on action under state deceptive trade practice or consumer protection acts. 18 A.L.R.4th 1340.

Fraud as extending statutory limitations period for contesting will or its probate. 48 A.L.R.4th 1094.

Fraudulent concealment of cause of action for wrongful death as affecting period of limitations. 88 A.L.R.4th 851.

Modern status of the application of "discovery rule" to postpone running of limitations against actions relating to breach of building and construction contracts. 33 A.L.R.5th 1.

Causes of action governed by limitations period in UCC § 2-725. 49 A.L.R.5th 1.

Attorney Malpractice – Tolling or Other Exceptions to Running of Statute of Limitations. 87 A.L.R.5th 473.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions §§ 158 et seq.

CJS.

54 C.J.S., Limitations of Actions §§ 240, 241.

§ 15-1-69. Commencement of new action subsequent to abatement or defeat of original action.

If in any action, duly commenced within the time allowed, the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if, after verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on appeal, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after reversal of the judgment therein, and his executor or administrator may, in case of the plaintiff's death, commence such new action, within the said one year.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 1 (16); 1857, ch. 57, art. 19; 1871, § 2163; 1880, § 2686; 1892, § 2756; 1906, § 3116; Hemingway's 1917, § 2480; 1930, § 2314; 1942, § 744.

Cross References — Other actions having one year statute of limitations, see §§ 15-1-33, 15-1-35.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Defeat of action in general.
4. —Matter of form.
5. —Reversal of judgment.
6. Action improperly dismissed.
7. Standing.

1. In general.

In a medical malpractice case in which the first action filed by the survivors and heirs of the deceased was clearly filed within the two-year statute of limitations found in Miss. Code Ann. § 15-1-36(2), but was dismissed pursuant to Miss. Code Ann. § 15-1-36(15) because they had not provided the required notice to the hospital and the healthcare provider prior to filing and the hospital and the healthcare provider filed a motion for summary judgment to dismiss the second medical malpractice suit as untimely, the Saving Statute, Miss. Code Ann. § 15-1-69, applied to the second filing, and it was not untimely. The first case had been duly commenced. Herrington v. Promise Specialty Hosp., 665 F. Supp. 2d 708, 2009 U.S. Dist. LEXIS 90509 (S.D. Miss. 2009).

Savings statute, Miss. Code Ann. § 15-1-69, is designed as remedial legislation intended to protect the good-faith efforts of plaintiffs who make a simple mistake; the statute is not designed to penalize plaintiffs and bar the continuation of an ongoing suit because the drafters of the law surely did not intend that a suit automatically abate or be dismissed upon the death of a party. Harris v. Darby, 17 So. 3d 1076, 2009 Miss. LEXIS 447 (Miss. 2009).

Trial court erred in granting a doctor and a medical practice summary judgment in an executrix's medical malpractice action on the ground that the executrix's motion to substitute parties pursuant to Miss. R. Civ. P. 25 was barred by Miss. Code Ann. § 15-1-69 because § 15-1-69 was inapplicable when the action was never abated or dismissed in any manner; had the trial court dismissed the case without prejudice, the savings statute would have applied, and the executrix would have had a full year from that dismissal to re-file the suit, but since the trial court granted summary judgment, it did not trigger the statute. Harris v. Darby, 17 So. 3d 1076, 2009 Miss. LEXIS 447 (Miss. 2009).

Where a plaintiff has been defeated by some matter not affecting the merits, some defect or informality, which he can remedy or avoid by a new process, the statute of limitations shall not prevent him from doing so, provided he follows it promptly, by suit within a year; Mississippi's savings statute is highly remedial, and it ought to be liberally construed. However, the plaintiff must have exercised good faith in filing the first action in the wrong court. Estate of Boles v. Nat'l Heritage Realty, Inc., 2009 U.S. Dist. LEXIS 55825 (N.D. Miss. June 23, 2009).

Although an appellate court rendered void ab initio a wrongful death action because the administratrix lacked standing to file a wrongful death action as a result of the chancery court's lack of subject matter jurisdiction over the estate, regardless of whether the estate's first complaint tolled the statute of limitations, the savings statute applied to save the cause of action, and Tolliver did not address the application of the savings statute. The savings statute saved the otherwise time-barred cause of action. Estate of Boles v. Nat'l Heritage Realty, Inc., 2009 U.S. Dist. LEXIS 55825 (N.D. Miss. June 23, 2009).

Pursuant to Miss. Code Ann. § 11-46-11 of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 to 11-46-23, and Miss. Code Ann. § 15-1-1, Miss. Code Ann. § 15-1-69 did not apply to the MTCA, and it is worth noting that non-tort claims act cases are not controlling as to the applicability of § 15-1-69, and because the MTCA has a one-year statute of limitation that is significantly shorter than the catchall three-year statute of limitation, the one-year statute of limitation found in Miss. Code Ann. § 11-46-11 is controlling; thus, the court rejected the parents' claim that Miss. Code Ann. § 15-1-69 applied to the MTCA to toll the statute of limitation under Miss. Code Ann. § 11-46-11. Stockstill v. State, 854 So. 2d 1017, 2003 Miss. LEXIS 449 (Miss. 2003).

This section did not apply to an action originally filed in federal court since the plaintiff did not erroneously file the action in good faith where he had moved to another state in an attempt to establish diversity jurisdiction and without a good faith intent to establish residence. Wertz v. Ingalls Shipbuilding, Inc., 790 So. 2d 841, 2000 Miss. App. LEXIS 548 (Miss. Ct. App. 2000).

This section does not extend to suits filed within the permitted one-year grace period after the same cause of action has been dismissed in a court of another state. S & H Grocery, Inc. v. Gilbert Constr. Co., 733 So. 2d 851, 1998 Miss. App. LEXIS 1136 (Miss. Ct. App. 1998).

The "savings" provision of the statute does not apply to suits within the permitted one-year grace period after the same cause of action has been dismissed in a court of another state. S & H Grocery, Inc. v. Gilbert Constr. Co., 724 So. 2d 965, 1998 Miss. App. LEXIS 1016 (Miss. Ct. App. 1998).

On account of all expired time in particular case, plaintiffs could not avail selves of protection afforded by § 15-1-69. Brown v. Dow Chemical Co., 777 F. Supp. 504, 1989 U.S. Dist. LEXIS 17546 (S.D. Miss.), aff'd, 889 F.2d 272, 1989 U.S. App. LEXIS 16794 (5th Cir. Miss. 1989).

This section is applicable to orders dismissing suits for lack of jurisdiction, and thus operated to save a personal injury action which was dismissed for lack of jurisdiction and refiled a few days beyond six years after plaintiff had reached majority, but within one year from the date of dismissal. Ryan v. Wardlaw, 382 So. 2d 1078, 1980 Miss. LEXIS 1970 (Miss. 1980).

This section [Code 1942, § 744] does not apply where the former action was instituted in another state. C & L Rural Electric Co-op. Corp. v. Kincade, 175 F. Supp. 223, 1959 U.S. Dist. LEXIS 2934 (D. Miss. 1959), aff'd, 276 F.2d 929, 1960 U.S. App. LEXIS 4898 (5th Cir. Miss. 1960).

This section [Code 1942, § 744] does not extend time prescribed for institution of suit under Louisiana compensation laws. Dunn Const. Co. v. Bourne, 172 Miss. 620, 159 So. 841, 1935 Miss. LEXIS 130 (Miss. 1935).

Good faith in the institution of the action dismissed is an element in determining the right to invoke this section [Code 1942, § 744]. Hawkins v. Scottish Union & Nat'l Ins. Co., 110 Miss. 23, 69 So. 710, 1915 Miss. LEXIS 10 (Miss. 1915).

The section [Code 1942, § 744] applies to suits in equity as well as law. Weathersly v. Weathersly, 31 Miss. 662, 1856 Miss. LEXIS 138 (Miss. 1856).

The right given is to the parties to the first suit, and not to different parties. Ross, Strong & Co. v. Sims, 27 Miss. 359, 1854 Miss. LEXIS 57 (Miss. 1854).

The section [Code 1942, § 744] does not abridge the time of limitation, but enlarges it. A second suit may be brought after the expiration of the year if the general statutes do not bar. Lang v. Fatheree, 15 Miss. 404, 1846 Miss. LEXIS 166 (Miss. 1846).

2. Applicability.

Savings statute did not apply because a prior complaint was dismissed without prejudice for want of prosecution. Brown-Howle v. Cmty. Bank, — So. 3d —, 2018 Miss. App. LEXIS 527 (Miss. Ct. App. Oct. 23, 2018).

Savings statute was not applicable to the order granting the manufacturer's motion to dismiss, as the patient filed the second amended complaint without leave of court or permission from defendants. Meeks v. Hologic, Inc., 179 So. 3d 1127, 2015 Miss. LEXIS 610 (Miss. 2015).

Because the wife met every requirement in Miss. Code Ann. § 93-5-31 to have a divorce revoked, the appellate court erred in reversing the chancery court's revocation of the parties' divorce; in part, there was sufficient evidence of reconciliation and no statutory reference was made to the death of one of the parties. Because the action was not abated upon husband's death, Miss. Code Ann. § 15-1-69 was inapplicable. Carlisle v. Allen, 40 So. 3d 1252, 2010 Miss. LEXIS 391 (Miss. 2010).

Defendants argued that there was substantial ground for difference of opinion as courts in other jurisdictions have come to contrary conclusions as to the application of their own states' savings statutes in similar circumstances; however, it was of no consequence to the case that Missouri, Kansas, Utah, Colorado, or any other state would choose not to apply its own savings statute in the circumstances. The issue was whether Mississippi would apply its savings statute, and defendants did not present any evidence that there was substantial ground for a difference of opinion as to that issue. Estate of Boles v. Nat'l Heritage Realty, Inc., 2009 U.S. Dist. LEXIS 55825 (N.D. Miss. June 23, 2009).

3. Defeat of action in general.

Although a second amended malpractice action could be filed under the savings statute, Miss. Code Ann. § 15-1-69 since a letter did not substantially comply with the notice provisions of Miss. Code Ann. § 15-1-36(15), the 60 day tolling period was not triggered, the statute of limitations had run, and the action should have been dismissed with prejudice. Arceo v. Tolliver, 19 So. 3d 67, 2009 Miss. LEXIS 393 (Miss. 2009).

While the wrongful death beneficiaries' first lawsuit against a railway in federal court when their relative was killed in a railroad crossing accident was timely commenced, and the instant state action was for the same cause of action, dismissal of their state action was proper as their voluntary dismissal of the first federal lawsuit without prejudice did not fall within the protection of Miss. Code Ann. § 15-1-69; a voluntary withdrawal did not constitute the "accidental" or "inadvertent" failure of an action, nor were the beneficiaries "defeated" within the meaning of the savings statute when they were nonsuited upon their own request. Marshall v. Kan. City Southern Ry., 7 So. 3d 265, 2007 Miss. App. LEXIS 752 (Miss. Ct. App. 2007), rev'd, 7 So. 3d 210, 2009 Miss. LEXIS 106 (Miss. 2009).

In November 1997, plaintiff brought suit for wrongful death, but the record reflected that she failed to properly serve process upon defendant within 120 days. Because process was not served within the 120-day period as provided by Miss. R. Civ. P. 4(h), the running of the statute of limitations resumed; further, the statute of limitations ran in March, 2000, some 14 months prior to defendant's motion to dismiss and some 19 months prior to plaintiff's filing of a second identical wrongful death action, and therefore, when plaintiff filed her second action, the three year statute of limitation set forth in Miss. Code Ann. § 15-1-49 had run. Owens v. Mai, 891 So. 2d 220, 2005 Miss. LEXIS 18 (Miss. 2005).

Trial court erred in denying a summary judgment motion filed by a casino and its employee against the malicious prosecution claim filed by certain individuals. The individuals' first claim against the casino was dismissed for want of prosecution, and the savings clause in Miss. Code Ann. § 15-1-69 did not prevent the second claim, which was based on the same facts, from being barred by the statute of limitation in Miss. Code Ann. § 15-1-35. Jackpot Miss. Riverboat, Inc. v. Smith, 874 So. 2d 959, 2004 Miss. LEXIS 641 (Miss. 2004), overruled in part, Knight v. Knight, 85 So. 3d 832, 2012 Miss. LEXIS 24 (Miss. 2012).

Code 1942, § 744 allowing one to bring an action within one year after a previous action has been defeated for reasons other than upon the merits did not apply to that portion of the plaintiff's suit which was founded on a cause of action created by Code 1942, § 1075, and therefore that portion of the suit which was founded on § 1075, and brought more than three years after the alleged destruction of trees, although within one year after defeat of the action for a reason other than upon its merits, was barred by the one-year period of limitations contained in Code 1942, § 1087. Evans v. Broadhead, 233 So. 2d 771, 1970 Miss. LEXIS 1667 (Miss. 1970).

An action by a Mississippi employee injured while working in another state for compensation under the workmen's compensation act of such other state, in which the time for making a claim is not a condition attached to the right, is not barred where brought in a Federal court in Mississippi within one year after the dismissal for lack of jurisdiction of a suit for compensation for the aggravation by the injury of the condition caused by a former injury. Pulliam v. Gulf Lumber Co., 312 F.2d 505, 1963 U.S. App. LEXIS 6406 (5th Cir. Miss. 1963).

Order dismissing suit begun before bar of limitations, with nothing indicating it was near abatement, or that dismissal was for any matter of form, held not to bring the case within this section [Code 1942, § 744].W. W. T. Raleigh Co. v. Barnes, 143 Miss. 597, 109 So. 8, 1926 Miss. LEXIS 298 (Miss. 1926).

Evidence not disclosing cause of former action held not to bring it within provisions of statute as to commencing new action for same cause as one abated, or in which judgment was reversed on appeal. Cossar v. Grenada Oil Mill, 138 Miss. 890, 103 So. 509, 1925 Miss. LEXIS 92 (Miss. 1925).

Where suit is brought after the expiration of the time designated in a fire insurance policy within which suits must be brought, the suit is barred, notwithstanding a previous suit, which was dismissed, had been brought within that time, since this section [Code 1942, § 744] has no application to a contract which fixes its own period of limitation as to time within which a suit may be brought. Ward v. Pennsylvania Fire Ins. Co., 82 Miss. 124, 33 So. 841 (Miss. 1903).

Where upon the trial of a suit, the court found that the plaintiff did not have the legal title to the claim sued on when the action was commenced, the action was not defeated for any matter of form so as to bring the case within Code of 1871, § 2163, a former enactment of this provision. Meath v. Board of Mississippi Levee Comm'rs, 109 U.S. 268, 3 S. Ct. 284, 27 L. Ed. 930, 1883 U.S. LEXIS 970 (U.S. 1883).

A suit dismissed for want of security for costs is not within the section [Code 1942, § 744]. Memphis & C. R. Co. v. Orr, 52 Miss. 541, 1876 Miss. LEXIS 253 (Miss. 1876).

4. —Matter of form.

Mississippi Supreme Court's analysis as to whether a dismissal is for a matter of form focuses on the content or substance of the record to determine the purpose or reason for the dismissal; within the context of the savings statute, avoidance or defeat for lack of subject matter jurisdiction is avoidance or defeat for a matter of form. Furthermore, standing is an aspect of subject matter jurisdiction. Estate of Boles v. Nat'l Heritage Realty, Inc., 2009 U.S. Dist. LEXIS 55825 (N.D. Miss. June 23, 2009).

Wrongful death case was not time barred under Miss. Code Ann. § 15-1-49 because the savings provision in Miss. Code Ann. § 15-1-69 applied since a voluntary dismissal without prejudice in federal court was considered a matter of form where it was based on subject matter jurisdiction. Several beneficiaries continually and in good faith sought to have the merits of their case heard in Mississippi state court, they sought a Fed. R. Civ. P. 54(b) certified judgment to challenge a federal district court's subject matter jurisdiction, and they timely refiled their second cause of action within one year of the dismissal of the first case. Marshall v. Kan. City S. Rys., 7 So. 3d 210, 2009 Miss. LEXIS 106 (Miss. 2009).

Trial court's dismissal of an action for failure to serve process as required by Miss. R. Civ. P. 4 is not a "matter of form" for purposes of the savings statute, Miss. Code Ann. § 15-1-69. Additionally, if service of process is not made upon a defendant in compliance with Miss. R. Civ. P. 4(h), the limitations period beings to run again at the end of 120 days. Owens v. Mai, 891 So. 2d 220, 2005 Miss. LEXIS 18 (Miss. 2005).

Statute of limitations applicable to action founded on judgment or decree (§ 15-1-43) is tolled when suit to renew decree is filed, but commences to run again when suit to renew is dismissed as stale under § 11-53-25; dismissal of stale case is not dismissal for matter of form to which statute of limitations applicable to commencement of new action subsequent to abatement or defeat of original action (§ 15-1-69) would apply. Deposit Guaranty Nat'l Bank v. Roberts, 483 So. 2d 348, 1986 Miss. LEXIS 2396 (Miss. 1986).

Dismissal of suit for lack of jurisdiction was a matter of form and the plaintiff was entitled to one year thereafter under this section [Code 1942, § 744] within which to file a second suit. Lowry v. International Brotherhood of Boilermakers, etc., 220 F.2d 546, 1955 U.S. App. LEXIS 4494 (5th Cir. Miss. 1955).

Dismissal of suit filed in Federal court within limitation period for lack of jurisdiction is a dismissal for matter of form within this section, hence suit filed within month of dismissal of suit in Federal court is within one year saving provision. Frederick Smith Enterprise Co. v. Lucas, 204 Miss. 43, 36 So. 2d 812, 1948 Miss. LEXIS 341 (Miss. 1948).

Dismissal of a suit in equity because of want of jurisdiction of the subject matter resulting from joinder of independent causes of action is a dismissal for matter of form within the purview of this section [Code 1942, § 744]. Hawkins v. Scottish Union & Nat'l Ins. Co., 110 Miss. 23, 69 So. 710, 1915 Miss. LEXIS 10 (Miss. 1915).

Amended declaration not barred where original filed in time. Yazoo & M. V. R. Co. v. Rivers, 93 Miss. 557, 46 So. 705, 1908 Miss. LEXIS 103 (Miss. 1908).

Where a bill by a ward to review a partition of land, and also to surcharge her guardian's accounts, is, because of multifariousness, dismissed without prejudice as to the partition, relief being given as to the accounts, the dismissal is for "a matter of form," and a new bill of review may be filed within one year thereafter. Young v. Walker, 70 Miss. 813, 12 So. 546, 1893 Miss. LEXIS 1 (Miss. 1893).

5. —Reversal of judgment.

The section [Code 1942, § 744] does not apply where the judgment in favor of plaintiff is reversed, and the Supreme Court re-establishes a verdict for the defendant and dismisses the suit. Wilkes v. Coopwood, 39 Miss. 348, 1860 Miss. LEXIS 55 (Miss. 1860).

6. Action improperly dismissed.

Chancery court properly ruled that a teacher's claim for relief was barred by the statute of limitations because she failed to refile her complaint in chancery court until she again alleged a breach of contract and sexual discrimination as an original complaint; since the teacher failed to properly perfect an appeal of the school district's decision affirming her termination and to obtain federal ancillary jurisdiction over her state-law claim, no tolling of the statute of limitations occurred. Lacour v. Claiborne County Sch. Dist., 119 So. 3d 1128, 2013 Miss. App. LEXIS 481 (Miss. Ct. App. 2013).

In a case in which plaintiff filed a petition to perpetuate testimony in a circuit court, the matter was then removed to federal court, wherein plaintiff sought dismissal, and plaintiff filed a complaint in the circuit court raising the same claims against the same parties before the federal court had dismissed the matter, the circuit court erred in dismissing plaintiff's post-dismissal complaint because the record supported a finding that the federal court's dismissal was based upon a "matter of form" not affecting the merits–namely, a lack of jurisdiction due to the absence of a complaint–as its order stated that no "civil action" yet existed. Plaintiff had inadvertently found himself in a procedural quagmire, but he made a good-faith effort to preserve his claim, at no time envincing an intent to abandon his claim, and, accordingly, application of the savings statute, Miss. Code Ann. § 15-1-69, to his post-dismissal complaint was appropriate and consistent with the purposes of the statute because he filed the complaint within one year of the federal court's dismissal. Crawford v. Morris Transp., Inc., 990 So. 2d 162, 2008 Miss. LEXIS 421 (Miss. 2008).

Dismissal of the wife's second wrongful death suit for death of the deceased, her husband, based on the owner of the mobile park's employment and negligent supervision of an employee who stabbed and killed the deceased was improper under the Mississippi savings statute, Miss. Code Ann. § 15-1-69, because the wife's suit should not be lost for a matter not affecting the merits of the case when the fault could be remedied merely by new process being issued. Owens v. Mai, 881 So. 2d 278, 2003 Miss. App. LEXIS 1090 (Miss. Ct. App. 2003), rev'd, 891 So. 2d 220, 2005 Miss. LEXIS 18 (Miss. 2005).

7. Standing.

In a wrongful death case in which a circuit court found that the deceased's girlfriend, who was also his personal representative, had standing to bring the case and a sand company filed an interlocutory appeal of the circuit court's denial of its motion for summary judgment, since, at the time she filed the suit, the girlfriend had not yet been formally appointed executrix of the deceased's estate, she did not have standing as his personal representative to bring the present action at that time. The personal representative also lacked standing as the deceased's executrix under the savings statute. Clark Sand Co. v. Kelly, 2010 Miss. LEXIS 94 (Miss. Feb. 25, 2010), op. withdrawn, sub. op., 60 So. 3d 149, 2011 Miss. LEXIS 227 (Miss. 2011).

RESEARCH REFERENCES

ALR.

Estoppel to rely on statute of limitations. 24 A.L.R.2d 1413.

Successive actions as within statutory provision fixing time within which new action may be commenced after nonsuit or judgment not on merits. 54 A.L.R.2d 1229.

Statute permitting new action, after failure of original action timely commenced, as applicable where original action was filed in another state. 55 A.L.R.2d 1038.

Determination of beginning of period allowed by statute for commencement of new action after failure, otherwise than on merits, of action timely begun. 79 A.L.R.2d 1270.

Voluntary dismissal or nonsuit as within provision of statute extending time for new action in case of dismissal or failure of original action otherwise than upon merits. 79 A.L.R.2d 1290.

Character or kind of action or proceeding within operation of statute permitting new action after expiration of period of limitation, upon failure of previous action commenced within the period. 79 A.L.R.2d 1309.

Character or kind of action or proceeding within statute permitting new action after limitation period, upon failure of timely action. 79 A.L.R.2d 1309.

Statute permitting new action after failure of original action commenced within period of limitation, as applicable in cases where original action failed for lack of jurisdiction. 6 A.L.R.3d 1043.

Applicability, as affected by change in parties, of statute permitting commencement of new action within specified time after failure of prior action not on merits. 13 A.L.R.3d 848.

Effect of statute permitting new action to be brought within specified period after failure of original action other than on the merits to limit period of limitations. 13 A.L.R.3d 979.

Application to period of limitations fixed by contract, of statute permitting new action to be brought within specified time after failure of prior action for cause other than on the merits. 16 A.L.R.3d 452.

Tolling or interruption of running of statute of limitations pending appointment of executor or administrator for tortfeasor in personal injury or death action. 47 A.L.R.3d 179.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions §§ 251 et seq.

CJS.

54 C.J.S., Limitations of Actions §§ 287, 288 et seq.

§ 15-1-71. Limitation of setoff.

All the provisions of this chapter shall apply to the case of any debt or demand on the contract, alleged by way of setoff on the part of a defendant. The time of limitation of such debt or demand shall be computed in like manner as if an action had been commenced therefor at the time when the plaintiff's action was commenced. The fact that a setoff is barred shall not preclude the defendant from using it as such if he held it against the debt sued on before it was barred.

HISTORY: Codes, 1857, ch. 57, art. 22; 1871, § 2166; 1880, § 2687; 1892, § 2756a; 1906, § 3117; Hemingway's 1917, § 2481; 1930, § 2317; 1942, § 747.

JUDICIAL DECISIONS

1. In general.

Where the defendant held his several items of setoff against the debt sued on by the plaintiff before they were barred by the statutes of limitation, the fact that the defendant's items of setoff may have been barred by the statute of limitation at the time the plea of setoff was filed did not preclude the defendant from using the items as a setoff against the debt sued on. Gerald v. Foster, 251 Miss. 63, 168 So. 2d 518, 1964 Miss. LEXIS 329 (Miss. 1964).

A setoff barred may be used defensively, but it cannot be the basis of a judgment against plaintiff for any excess. Feld v. Coleman, 72 Miss. 545, 17 So. 378, 1895 Miss. LEXIS 15 (Miss. 1895).

RESEARCH REFERENCES

ALR.

Claim barred by limitations as subject of setoff, counterclaim, recoupment, or cross bill. 1 A.L.R.2d 630.

Right of illegitimate to take under testamentary gift to "heirs". 27 A.L.R.2d 1232.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions §§ 100-102.

CJS.

54 C.J.S., Limitations of Actions §§ 53, 54.

§ 15-1-73. New promise to be in writing; effect of new promise by one or more joint contractors as against nonpromisors.

In actions founded upon any contract, an acknowledgment or promise shall not be evidence of a new or continuing contract whereby to take any case out of the operation of the provisions of this chapter or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing signed by the party chargeable thereby. Where there shall be two or more joint contractors, one or more of them shall not lose the benefit of the provisions of this chapter so as to be chargeable, by reason only of an acknowledgment or promise made or signed by any other or others of them. In actions against joint contractors, if the plaintiff be barred as to one or more of the defendants but be entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to any of the defendants against whom he is entitled to recover, and for the other defendants against the plaintiff.

HISTORY: Codes, Hutchinson's 1848, ch. 57, art. 6 (16); 1857, ch. 57, art. 21; 1871, § 2165; 1880, § 2688; 1892, § 2757; 1906, § 3118; Hemingway's 1917, § 2482; 1930, § 2318; 1942, § 748.

Cross References — Consideration for new promise founded in formal legal obligation, see § 15-1-3.

Contracts required to be in writing, see §§ 15-3-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Acknowledgment or new promise in general.
3. Sufficiency of acknowledgment or new promise.
4. Certainty and definiteness.
5. Evidence.
6. Pleading.

1. In general.

When a writing or memorandum is lost or destroyed, both its existence and contents may be proven by parol evidence; the loss or destruction of a memorandum does not deprive it of effect under the Statute of Frauds. Thus, § 15-1-29, § 15-1-73 and the Statute of Frauds (§ 15-3-1) did not bar an action to enforce a loan agreement which was allegedly destroyed in a fire where the plaintiff sufficiently proved the existence and contents of the destroyed memorandum. Williams v. Evans, 547 So. 2d 54, 1989 Miss. LEXIS 335 (Miss. 1989).

A judgment is not a contract, and is not embraced in the terms of this section [Code 1942, § 748]. Berkson v. Cox, 73 Miss. 339, 18 So. 934, 1895 Miss. LEXIS 120 (Miss. 1895).

2. Acknowledgment or new promise in general.

Statute of limitations, applicable to all but two items on debit and credit open account, was not tolled by partial payment on the account where there was no written acknowledgment of indebtedness or promise to pay by the debtor. McArthur v. Acme Mechanical Contractors, Inc., 336 So. 2d 1306, 1976 Miss. LEXIS 1552 (Miss. 1976).

Contract between corporation and holder of notes and salary claims against it whereby notes were to be held in escrow for two years to abide payment of a new note given by the corporation to such creditor, payment of which would liquidate the original claims but if the lieu note was not paid at maturity, the original notes would be redelivered and the entire account made current, constituted an acknowledgment in writing of the debt removing the claims from the bar of the respective statutes of limitation. Dyer v. Lowe, 201 Miss. 516, 29 So. 2d 324, 1947 Miss. LEXIS 413 (Miss. 1947).

Even though partial payment on a note executed and delivered in Alabama might operate in substance as a new promise under the Alabama law, the Mississippi statute relating to the remedy would be applicable in case of an attempt to enforce the obligation in Mississippi, and therefore such payments in Alabama would not toll the running of the limitation period, in view of a statutory provision that in actions founded upon contracts the case would not be taken out of the operation of the limitation statute, unless an acknowledgment or promise of the indebtedness should be made in writing signed by the party chargeable therewith. Montgomery v. Yarbrough, 192 Miss. 667, 6 So. 2d 925 (Miss. 1942).

The verbal acknowledgment of an account's correctness, making it an account stated, will not avoid the statute applicable to open accounts. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938); Floyd v. Pearce, 57 Miss. 140, 1879 Miss. LEXIS 33 (Miss. 1879).

Counterproposal altering original agreement, which is accepted, constitutes new written contract and 6-year statute will be applied accordingly. Edward Thompson Co. v. Foy, 115 Miss. 848, 76 So. 685, 1917 Miss. LEXIS 268 (Miss. 1917).

3. Sufficiency of acknowledgment or new promise.

Buyer's letter to the seller admitting that its account was overdue and promising to pay the open account on a specific date was sufficiently definite and unequivocal to toll the statute of limitations under Miss. Code Ann. § 15-1-73 in the seller's action to collect the money owed. Harrison Enters. v. Trilogy Communs., Inc., 818 So. 2d 1088, 2002 Miss. LEXIS 36 (Miss. 2002).

The fact that the maker of a promissory note in the original amount of $6,600 made a partial payment of $100 more than six years after the date it became due and payable and at approximately the same time stated in a telephone conversation with an employee of the payee that he acknowledged the indebtedness and promised to make future payments until the entire balance of the indebtedness was canceled was insufficient, in view of the provisions of this section, to toll the statute of limitations. United States Fidelity & Guaranty Co. v. Krebs, 190 So. 2d 857, 1966 Miss. LEXIS 1405 (Miss. 1966).

Chattel deed of trust expressly acknowledging secured indebtedness evidenced by note for exact amount of note secured by prior trust deed held sufficient acknowledgment of indebtedness secured by prior trust deed to toll statute of limitations where original note was identified as being included in indebtedness acknowledged. Richter Phillips Co. v. Phillips, 175 Miss. 242, 166 So. 393, 1936 Miss. LEXIS 26 (Miss. 1936).

Letter from debtor stating he thought note had been paid, and continuing "but as I noted that the note. . . had not been stamped with any cancellation stamp, the same certainly must be unpaid," and offering to settle for lump sum, held not sufficient to remove bar of statute. Philp v. Hicks, 112 Miss. 581, 73 So. 610, 1916 Miss. LEXIS 150 (Miss. 1916).

Deed of conveyance providing as consideration that grantee is to credit grantor's indebtedness with a certain sum and that such conveyance is not to impair the lien of a clearly identified deed of trust for balance due grantee is a sufficient written acknowledgment of amount secured by deed of trust. Stewart v. Forman, 90 Miss. 85, 43 So. 67, 1907 Miss. LEXIS 37 (Miss. 1907).

An acknowledgment signed by a debtor in these words "I hereby acknowledge that the above balance, $230, is correct," is sufficient. Tennessee Brewing Co. v. Hendricks, 77 Miss. 491, 27 So. 526, 1899 Miss. LEXIS 75 (Miss. 1899).

An acknowledgment in writing to a managing partner of a debt to him is a sufficient acknowledgment of a debt to his firm, if the debt be shown to be a partnership debt. Yarbrough v. Gilland, 77 Miss. 139, 24 So. 170, 1899 Miss. LEXIS 34 (Miss. 1899).

The following writing was held sufficient, viz: "Credit this on my note in the county treasury. I will be down soon to pay the balance." Written by a debtor of the county to the treasurer. Heflin v. Kinard, 67 Miss. 522, 7 So. 493, 1890 Miss. LEXIS 106 (Miss. 1890).

The following writing was held sufficient, viz: "I hereby waive the statute of limitations as to the within note and the deed of trust to secure the same;" indorsed on the back of the note. Bowmar v. Peine, 64 Miss. 99, 8 So. 166, 1886 Miss. LEXIS 22 (Miss. 1886).

The following writing was held insufficient, viz: "After hands are paid, appropriate balance due on my account to yourself. I would like to come there and do your work, so I could pay you what I owe you." Fletcher v. Gillan, 62 Miss. 8, 1884 Miss. LEXIS 3 (Miss. 1884).

The following writing was held insufficient, viz: "I wrote to Mr. M. about the 1st inst. to know how I should send the money, and have not heard from him. I am going to Aberdeen tomorrow and will send fifty dollars, which is all I can spare at present." Eckford v. Evans, 56 Miss. 18, 1878 Miss. LEXIS 34 (Miss. 1878).

The following writing was held insufficient, viz: "It will suit may convenience to execute my note for the balance due for rent, payable July 1, 1877." Trustees of Canton Female Academy v. Gilman, 55 Miss. 148, 1877 Miss. LEXIS 118 (Miss. 1877).

The following writing was held sufficient, viz: "We do hereby agree and promise to renew the note for which this mortgage is given, and to give a new mortgage whenever the exact amount due upon said note is ascertained;" indorsed on the back of the mortgage. Hart v. Boyt, 54 Miss. 547, 1877 Miss. LEXIS 48 (Miss. 1877).

An acknowledgment is sufficient, though the writing does not embody an express promise; and an acknowledgment and an agreement to waive the limitation will revive the debt previously barred. Beasley v. Evans, 35 Miss. 192, 1858 Miss. LEXIS 25 (Miss. 1858).

The indorsement of a credit on a note, though signed by both parties, is not a sufficient acknowledgment of the balance. Davidson v. Harrisson, 33 Miss. 41, 1857 Miss. LEXIS 6 (Miss. 1857).

4. Certainty and definiteness.

Acknowledgment or promise that will

save bar of statute must identify debt and acknowledge or promise to pay a definite amount, unless amount can be ascertained by calculation from a written instrument. Taylor v. Desoto Lumber Co., 137 Miss. 829, 102 So. 260, 1924 Miss. LEXIS 219 (Miss. 1924).

Debtor's statement in response to creditor's statement of account that he was enclosing a check for one thousand dollars, part payment on account, and that he would take care of the balance a little later, held not acknowledgment or promise such as would save bar of statute. Taylor v. Desoto Lumber Co., 137 Miss. 829, 102 So. 260, 1924 Miss. LEXIS 219 (Miss. 1924).

Letters not written to serve as an acknowledgment or promise in order to prevent the bar of the statute, and not precise and definite as to debt and amount, although they show an acknowledgment of an indebtedness, do not take the case out of the operation of the provisions of this chapter. Allen v. Hillman, 69 Miss. 225, 13 So. 871, 1891 Miss. LEXIS 174 (Miss. 1891).

The new promise need not express the exact amount due, but must specify the particular debt, admit its justice, and indicate an intention to pay it; but the expression of an intent to pay is not necessary if the justice of the debt be admitted without reservation. Hart v. Boyt, 54 Miss. 547, 1877 Miss. LEXIS 48 (Miss. 1877).

An acknowledgment of an indefinite balance will not save the bar as to any amount whatever. Mask v. Philler, 32 Miss. 237, 1856 Miss. LEXIS 185 (Miss. 1856).

5. Evidence.

Parol evidence is admissible to identify debt and apply writing to its subject in determining sufficiency of new promise to toll statute of limitations. Richter Phillips Co. v. Phillips, 175 Miss. 242, 166 So. 393, 1936 Miss. LEXIS 26 (Miss. 1936).

6. Pleading.

An admission of indebtedness made in a pleading may take the case out of the statute. Kline v. Pearl, 236 Miss. 66, 109 So. 2d 556, 1959 Miss. LEXIS 294 (Miss. 1959).

Statute of limitations begins to run against an acknowledgment of indebtedness made by a pleading, only from the time when the suit was dismissed. Kline v. Pearl, 236 Miss. 66, 109 So. 2d 556, 1959 Miss. LEXIS 294 (Miss. 1959).

Superficial uncertainties as to exact amounts due, desolvable by explanation, are not sufficient to impair identification of an indebtedness under this section [Code 1942, § 478]. Dyer v. Lowe, 201 Miss. 516, 29 So. 2d 324, 1947 Miss. LEXIS 413 (Miss. 1947).

Where defendant, by sworn plea, expressly denies that he wrote, signed, or authorized letter to plaintiff acknowledging correctness of written account sued on, and there is not evidence to contrary, denial must be accepted as true. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938).

Where defendant pleaded the general issue and the three-year statute of limitations, the granting of permission to file a sworn plea, at the trial and over plaintiff's objections, denying writing of a letter alleged to constitute acknowledgment of indebtedness removing the bar of the three-year statute was within trial court's discretion. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938).

The alleged error in permitting appellant to file a sworn plea at trial denying writing of letter alleged to constitute acknowledgment of debt taking case out of three-year statute of limitations could not be considered on appeal in absence of cross-assignment of error by appellee. Stephenson v. Louisiana Oil Refining Co., 180 Miss. 410, 177 So. 912, 1938 Miss. LEXIS 13 (Miss. 1938).

A statement in a letter that the writer owes "merchandise $9.60," fixing the date, is not invalid because the articles are not specified. Yarbrough v. Gilland, 77 Miss. 139, 24 So. 170, 1899 Miss. LEXIS 34 (Miss. 1899).

RESEARCH REFERENCES

ALR.
Validity of contractual waiver of statute of limitations. 1 A.L.R.2d 1445.

Necessity and sufficiency, in order to toll statute of limitations as to debt, of statement of amount of debt in acknowledgment or new promise to pay. 21 A.L.R.4th 1121.

Am. Jur.
51 Am. Jur. 2d, Limitation of Actions §§ 282 et seq.

12 Am. Jur. Legal Forms 2d, Limitation of Actions, § 167:20 (acknowledgement of debt); §§ 167:32 et seq. (new promise to pay).

CJS.
54 C.J.S., Limitations of Actions §§ 300, 301 et seq.

§ 15-1-75. Bar of statute of limitations against one does not affect another jointly interested.

In all cases where the interests are joint, one shall not be barred because another jointly interested is, and the statute of limitations provided in this chapter shall be severally applied, and not jointly, to the right of actions, in whatever cause, pertaining to each of all the parties, though jointly interested.

HISTORY: Codes, 1906, § 3128; Hemingway's 1917, § 2492; 1930, § 2320; 1942, § 750.

JUDICIAL DECISIONS

1. In general.
Miss. Code Ann. § 15-1-75 has been interpreted to prevent the relation back of tolling to potentially jointly liable parties subsequently amended into existing litigation. Tolling begins when one is actually sued or brought in by amendment regardless of the status of a potentially jointly liable party; § 15-1-75 means nothing more. Rainwater v. Lamar Life Ins. Co., 381 F. Supp. 2d 581, 2005 U.S. Dist. LEXIS 21485 (S.D. Miss. 2005).

In Mississippi, suit against one of several persons liable in solido does not interrupt limitation statute as against other not so sued. Dunn Const. Co. v. Bourne, 172 Miss. 620, 159 So. 841, 1935 Miss. LEXIS 130 (Miss. 1935).

Louisiana statute requiring compensation proceedings to be instituted within one year from time cause of action accrued held to bar proceedings in Mississippi against employer not sued within one-year period notwithstanding that under Louisiana law both employer and insurer were liable in solido for compensation and insurer had been sued within the one-year period and that such suit under Louisiana procedural statutes interrupted prescription against debtors in solido, since one-year limitation period constituted part of substantive law which would be enforced in Mississippi while procedural statutes would not be so enforced. Dunn Const. Co. v. Bourne, 172 Miss. 620, 159 So. 841, 1935 Miss. LEXIS 130 (Miss. 1935).

RESEARCH REFERENCES

ALR.
What statute of limitations applies to action for contribution against joint tortfeasor. 57 A.L.R.3d 927.

§ 15-1-77. Effect upon limitations of concurrent jurisdiction in courts of common law and of equity.

Whenever there be a concurrent jurisdiction in the courts of common law and in the courts of equity of any cause of action, the provisions of this chapter limiting a time for the commencement of a suit for such cause of action in a court of common law, shall apply to all suits to be brought for the same cause in a court of chancery.

HISTORY: Codes, 1857, ch. 57, art. 30; 1871, § 2174; 1880, § 2695; 1892, § 2762; 1906, § 3124; Hemingway's 1917, § 2488; 1930, § 2321; 1942, § 751.

RESEARCH REFERENCES

Am. Jur.
27A Am. Jur. 2d, Equity §§ 161 et seq.

CJS.
54 C.J.S., Limitations of Actions §§ 74 et seq.

§ 15-1-79. Limitations inapplicable to suits on certain obligations of banks and moneyed corporations.

None of the provisions of this chapter shall apply to suits brought to enforce payment of notes, bills, or evidences of debt issued by any bank or moneyed corporation.

HISTORY: Codes, 1857, ch. 57, art. 27; 1871, § 2171; 1880, § 2690; 1892, § 2758; 1906, § 3119; Hemingway's 1917, § 2483; 1930, § 2319; 1942, § 749.

JUDICIAL DECISIONS

1. In general.

Notes issued by a railroad company in 1861 and 1862, made payable on demand, and which could not be re-issued as currency after one year from the close of the then existing war, are not within the saving of the section [Code 1942, § 749]. Butts v. Vicksburg & M. R. R. Co., 63 Miss. 462, 1886 Miss. LEXIS 124 (Miss. 1886).

§ 15-1-81. Actions on nonnegotiable promissory notes [For effective date and applicability, see subsection (6)].

(1) An action to enforce the obligations of a party to pay a nonnegotiable promissory note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the promissory note, or if a due date is accelerated, within six (6) years after the accelerated date.

(2) If demand for payment is made to the maker of a nonnegotiable promissory note payable on demand, an action to enforce the obligation of a party to pay the promissory note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to

enforce the promissory note is barred if neither principal nor interest on the promissory note has been paid for a continuous period of ten (10) years.

(3) For purposes of this section, a “nonnegotiable promissory note” is an unconditional written undertaking to pay absolutely and in any event a fixed amount of money signed by the person undertaking to pay the money that is not an “instrument” under Section 75-3-104(b). Nonnegotiable promissory notes for purposes of this section include, but are not limited to, promissory notes that: (a) bear a variable rate of interest or provide for interest by reference to information not contained in the promissory note; (b) provide for interest after default; (c) are nonrecourse to the person undertaking to pay the money; or (d) qualify as “instruments” under Section 75-9-102(a)(47).

(4) This section shall not apply to negotiable promissory notes, drafts, checks, certificates of deposit or any other instrument or item for which Section 75-3-118 provides the applicable statute of limitations. Neither a lease nor a security agreement is a promissory note for purposes of this section. A promissory note is not investment property as defined in Section 75-9-102(a)(49), a letter of credit, or writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. It is the intention of this section that a “note,” as defined in Section 75-3-104(e), and nonnegotiable promissory notes, as defined in this section, shall have the same statutes of limitations.

(5) This section shall not apply to obligations arising from retail installment contracts. For purposes of this section, a “retail installment contract” is a contract for the sale of goods under which the buyer makes periodic payments and the seller retains a security interest in the goods. For the purposes of this section, “goods” have the same meaning as the definition of “goods” in Section 75-9-102(a)(44).

(6) This section takes effect on July 1, 2012, and shall apply to all nonnegotiable promissory notes for which the statute of limitations in effect immediately prior to that date has not run. This section shall have no application to promissory notes for which the statute of limitations has run prior to July 1, 2012.

HISTORY: Laws, 2010, ch. 506, § 2, eff from and after July 1, 2010.

CHAPTER 3.

PREVENTION OF FRAUDS

Article 1. In General. 15-3-1
Article 3. Uniform Fraudulent Transfer Act. 15-3-101

ARTICLE 1.

IN GENERAL.

Sec.
15-3-1. Certain contracts to be in writing.
15-3-3. Repealed.
15-3-5. Fraudulent conveyances, judgments, loans and the like; exceptions.
15-3-7. Property of improperly disclosed principal or partner to be treated as property of one ostensibly transacting business.
15-3-9. Creditors to be notified of destruction of insured stock of merchandise by fire.
15-3-11. Actions on contracts made during infancy.
15-3-13. Chapter is not applicable to official sales.
15-3-15. Effect of chapter on rules of evidence or presumptions of law.

§ 15-3-1. Certain contracts to be in writing.

An action shall not be brought whereby to charge a defendant or other party:

(a) upon any special promise to answer for the debt or default or miscarriage of another person;

(b) upon any agreement made upon consideration of marriage, mutual promises to marry excepted;

(c) upon any contract for the sale of lands, tenements, or hereditaments, or the making of any lease thereof for a longer term than one year;

(d) upon any agreement which is not to be performed within the space of fifteen months from the making thereof; or

(e) upon any special promise by an executor or administrator to answer any debt or damage out of his own estate;

unless, in each of said cases, the promise or agreement upon which such action may be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or signed by some person by him or her thereunto lawfully authorized in writing.

HISTORY: Codes, Hutchinson's 1848, ch. 47, art. 1 (1); 1857, ch. 44, art. 1; 1871, § 2892; 1880, § 1292; 1892, § 4225; 1906, § 4775; Hemingway's 1917, § 3119; 1930, § 3343; 1942, § 264; Laws, 1926, ch. 152.

Cross References — Concealed fraud, see § 15-1-67.
Requirement of new promises to be in writing, see § 15-1-73.
Ratification of contracts during infancy, see § 15-3-11.
Statute of frauds applicable to contracts for sale of personal property not otherwise

covered by Uniform Commercial Code, see § 75-1-206.

Requirement that contract for sale of goods be in writing, see § 75-2-201.

Statute of frauds applicable to sales contracts which are modified, see § 75-2-209(3).

Enforceability of guaranty written on negotiable instrument notwithstanding statute of frauds, see § 75-3-416.

Formal written requirements of letters of credit, see § 75-5-104.

Requirement of land being conveyed only by writing, see § 89-1-3.

Recording of marriage contracts, see § 89-5-3.

Conveyances and mortgages being made void if not lodged for record, see § 89-5-3.

Recording written contracts in relation to land, see § 89-5-7.

Parole agreement concerning party walls, see § 89-15-1.

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41. Settlement agreements.

1. In general.

Even if there was no enforceable contract, a seller was estopped from denying the deal he struck with a purchaser because the purchaser detrimentally relied on seller's inducements, most notably selling his home. Swartzfager v. Saul, 213 So. 3d 55, 2017 Miss. LEXIS 67 (Miss. 2017).

Constructive trusts are not subject to the statute of frauds. Allred v. Fairchild, 785 So. 2d 1064, 2001 Miss. LEXIS 143 (Miss. 2001).

A party may waive the protection of the Statute of Frauds. Canizaro v. Mobile Communications Corp. of Am., 655 So. 2d 25, 1995 Miss. LEXIS 138 (Miss. 1995).

Security agreements relating to collateral in possession of secured party are not required to be in writing, subject to applicability of the statute of frauds. In re Viscount Furniture Corp., 133 B.R. 360, 1991 Bankr. LEXIS 1630 (Bankr. N.D. Miss. 1991).

Where plaintiff, recipient of certain scholarship funds as financial assistance for medical school costs and tuition, was required to fulfill 4 year service obligation at approved health care facility, and signed private practice assignment agreement with health care facility, with such agreement stating that it would be "negotiable at the end of one year", and accepted employment there, but was terminated 10 months later with the termination being memorialized as a nonrenewal of employment agreement, claim by plaintiff regarding alleged unwritten contract for 4 years is barred by statute of frauds. Regarding one year contract of employment: duration of plaintiff's contract of employment was not to be confused with existence of an adequate writing to satisfy statute of frauds, and employment agreement relied upon by the plaintiff constitutes sufficient written evidence of a one year contract of employment to satisfy requirement of statute of frauds. Robinson v. Coastal Family Health Center, Inc., 756 F. Supp. 958, 1990 U.S. Dist. LEXIS 18728 (S.D. Miss. 1990).

Statute of frauds does not represent proper basis for dismissal of complaint for wrongful termination prior to end of first year of employment, but conversely, neither does it bar any claim that plaintiff had oral 4 year contract of employment with defendant. Robinson v. Coastal Family Health Center, Inc., 756 F. Supp. 958, 1990 U.S. Dist. LEXIS 18728 (S.D. Miss. 1990).

A contract to devise or bequeath property by will is enforceable, but must be in writing pursuant to the statute of frauds. Although a party may satisfy the court of the existence of an unwritten agreement to devise, the statute of frauds precludes specific performance as a remedy, even where the promisee has done all he or she was expected to do under the agreement. Williams v. Mason, 556 So. 2d 1045, 1990 Miss. LEXIS 34 (Miss. 1990).

The statute of frauds does not bar an action for damages based on fraud even though the promise underlying the fraud is itself unenforceable under the statute of frauds. Crystal Springs Ins. Agency, Inc. v. Commercial Union Ins. Co., 554 So. 2d 884, 1989 Miss. LEXIS 490 (Miss. 1989).

The doctrine of equitable estoppel may be pled as an exception in any case where the statute of frauds is asserted as a defense. Bowers Window & Door Co. v. Dearman, 549 So. 2d 1309, 1989 Miss. LEXIS 433 (Miss. 1989).

Statute of frauds does not apply to claim arising from negligent misrepresentation made in letter by bank written to importer regarding financial arrangements made by bank with manufacturer purchasing material from importer; even if statute did apply, doctrine of equitable estoppel would take case outside statute. Shogyo International Corp. v. First Nat'l Bank, 475 So. 2d 425, 1985 Miss. LEXIS 2180 (Miss. 1985).

Equitable estoppel is exception to § 15-3-1. PMZ Oil Co. v. Lucroy, 449 So. 2d 201, 1984 Miss. LEXIS 1676 (Miss. 1984).

Even though § 15-3-1(c) provides that no contract for the conveyance of an interest in land is binding unless signed by the party to be charged, equitable estoppel is a well-established exception to the statute of frauds. PMZ Oil Co. v. Lucroy, 449 So. 2d 201, 1984 Miss. LEXIS 1676 (Miss. 1984).

Grantee under deed attempted by interlineation to make his wife additional grantee by writing her name into deed following his signature; such addendum was written without knowledge of original grantor, was not signed by grantee, and was not acknowledged; held, interlineation was ineffective to convey title from either original grantor or from original grantee, as it was in conflict with this section. Perkins v. Kerby, 308 So. 2d 914, 1975 Miss. LEXIS 1857 (Miss. 1975), overruled in part, PMZ Oil Co. v. Lucroy, 449 So. 2d 201, 1984 Miss. LEXIS 1676 (Miss. 1984).

The written authorization to enter into a contract may be found in a partnership agreement whereby one of the parties or corporations under his control were empowered to contract in the name of the latter. Morgan v. Jackson Ready-Mix Concrete, 247 Miss. 863, 157 So. 2d 772, 1963 Miss. LEXIS 365 (Miss. 1963).

Where trust will result in absence of express agreement, fact that such agreement is made will not prevent trust from arising. Pitchford v. Howard, 208 Miss. 567, 45 So. 2d 142, 1950 Miss. LEXIS 275 (Miss. 1950).

The statute of frauds is a personal privilege of the contracting parties sought to be charged, and is not available to anyone else in a collateral proceeding. Wirtz v. Gordon, 187 Miss. 866, 184 So. 798, 1938 Miss. LEXIS 321 (Miss. 1938); Grisham v. Lutric, 76 Miss. 444, 24 So. 169, 1898 Miss. LEXIS 73 (Miss. 1898).

Where defendant's testimony was objected to on ground it was effort to vary terms of note, but objections not ruled on, finding for plaintiff did not constitute holding that agreement had not been made, but indicated such issue was not decided. Southern Package Corp. v. Beall, 181 Miss. 740, 180 So. 789, 1938 Miss. LEXIS 114 (Miss. 1938).

Fact that contract of sale was within statute did not relieve carrier from liability for damages caused by negligent delay. Parish & Co. v. Yazoo & M. V. R. Co., 103 Miss. 288, 60 So. 322, 1912 Miss. LEXIS 171 (Miss. 1912).

Principal not liable for acts of agent unless within the scope of actual or apparent authority; agent cannot enlarge authority by unauthorized acts. White v. Lee, 97 Miss. 493, 52 So. 206, 1910 Miss. LEXIS 217 (Miss. 1910).

2. Applicability.

Statute of frauds did not bar claim by purported partners because the partners' claims did not involve a dispute over a contract for the sale of lands, but a dispute over partnership profits and assets. An otherwise enforceable verbal partnership agreement did not constitute a contract for the sale of lands under the statute of frauds simply because the purpose of the partnership included the purchase of real estate. Latham v. Johnson, 262 So. 3d 569, 2018 Miss. App. LEXIS 314 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 798, 2019 Miss. LEXIS 48 (Miss. 2019).

If the mobile home purchaser were seeking damages for the breach of debtor's agreement to sell the mobile home in January 2007 then the Statute of Frauds would apply. But he was seeking to recover damages for fraud, and, therefore, the Statute of Frauds did not preclude his claim. Thomas v. Rice (In re Rice), 526 B.R. 631, 2015 Bankr. LEXIS 527 (Bankr. N.D. Miss. 2015).

Insurance agent's assertion that claims by intended insurance beneficiaries were barred by the statute of frauds because the change of beneficiary was not done in writing and approved, as required, lacked merit because the statute of frauds only affected matters prior to the execution of the contract or policy; as the issue involved the change of beneficiaries after the execution of the policy, the statute was inapplicable. Strait v. McPhail, 145 So. 3d 696, 2013 Miss. App. LEXIS 768 (Miss. Ct. App. 2013), rev'd, 145 So. 3d 664, 2014 Miss. LEXIS 422 (Miss. 2014).

Where a telephone company's constructive license to continue and use telephone lines and fixtures derived from Miss. Code Ann. § 77-9-715, the constructive license did not violate the statute of frauds, Miss. Code Ann. § 15-3-1, because the statute of frauds did not apply given that the telephone company's rights arose by operation of law and did not come from a contract. Marlow, LLC v. BellSouth Telecomms., Inc., 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011), aff'd in part and rev'd in part, 686 F.3d 303, 2012 U.S. App. LEXIS 13425 (5th Cir. Miss. 2012).

Where an amendment to a building purchase and sale agreement, stipulating that the inspection period had expired and the buyers had no further right to terminate the agreement, was signed by the buyers, and then delivered to the sellers, one of whom assented by his signature and the other two communicated their assent to the buyers via email from their agent, the amendment was enforceable against the buyers; the statute of frauds did not require that each of the sellers sign the document in order to enforce it, much less that they had to sign it in order to manifest assent to its terms. Heritage Bldg. Prop., LLC v. Prime Income Asset Mgmt., 43 So. 3d 1138, 2009 Miss. App. LEXIS 943 (Miss. Ct. App. 2009), cert. denied, 49 So. 3d 106, 2010 Miss. LEXIS 482 (Miss. 2010).

Trial court's grant of an injunction that prohibited a city from providing water to areas outside the city that had recently been annexed was reversed as the utility company's predecessor in interest had granted the city the right to provide such service. Even though the original agreement was not produced, the agreement was not subject to the statute of frauds as it was not a contract for the sale of land or a lease that ran for longer than a year, and its terms could have been proven by parole evidence. City of Hernando v. N. Miss. Util. Co., 901 So. 2d 652, 2004 Miss. App. LEXIS 1081 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273, 2005 Miss. LEXIS 302 (Miss. 2005).

Under principle that pre-UCC law is applicable unless displaced by particular provisions of Code, UCC statute of frauds, rather than general statute of frauds, applies to alleged oral agreement and subsequent confirmatory letter, where general statute of frauds and UCC provision are in conflict and mandate different results. H & W Industries, Inc. v. Formosa Plastics Corp., 860 F.2d 172, 1988 U.S. App. LEXIS 15357 (5th Cir. Miss. 1988).

The statute of frauds has no application to a contract executed by performance by both parties. Landry v. Moody Grishman Agency, Inc., 254 Miss. 363, 181 So. 2d 134, 1965 Miss. LEXIS 955 (Miss. 1965).

The statute does not apply to a promise to make a will. Boggan v. Scruggs, 200 Miss. 747, 29 So. 2d 86, 1947 Miss. LEXIS 358 (Miss. 1947), overruled, Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

3. Oral promises and contracts.

Oral statement by the principal of a corporate health care provider did not bind the principal individually to pay a corporate debt as it was barred by the statute of frauds. Patton Med. of Gulf Coast, Inc. v. Relle, 269 So. 3d 266, 2018 Miss. App. LEXIS 156 (Miss. Ct. App. 2018).

While a chancellor properly found that the relatives were entitled to a new trial, the chancellor erred in finding that the relatives were entitled to an equitable lien because their alleged oral contract failed under the statute of frauds. Barriffe v. Estate of Nelson, 153 So. 3d 613, 2014 Miss. LEXIS 492 (Miss. 2014).

Chapter 13 debtor's claim that he had an oral agreement with a creditor to sell the creditor a company he owned that manufactured and sold bird calls, in exchange for payment of $250,000 in five $50,000 increments over five years and the creditor's promise to forgive debts the debtor owed under several promissory notes he signed, was barred by two Mississippi statutes of frauds: Miss. Code Ann. §§ 15-3-1 and 75-2-201. Ziegler v. Hood (In re Hood), 2013 Bankr. LEXIS 3709 (Bankr. N.D. Miss. Sept. 3, 2013).

The statute of frauds did not bar a broker's breach of contract action arising from an oral brokerage agreement, under which the broker undertook to secure a particular corporation as a customer of another corporation for the purchase of its products, where the broker had secured the corporation as a customer for those products and had therefore fully performed its part of the agreement. American Chocolates, Inc. v. Mascot Pecan Co., 592 So. 2d 93, 1991 Miss. LEXIS 977 (Miss. 1991).

Action for fraud and deceit is not barred by § 15-3-1 notwithstanding that action is for damages incurred in reliance on oral promise that is itself unenforceable under statute of frauds. Walker v. U-Haul Co. of Mississippi, 734 F.2d 1068, 1984 U.S. App. LEXIS 21143 (5th Cir. Miss. 1984).

Although an action to enforce an oral agreement to devise real property in return for a loan would be unenforceable under the statute of frauds, the claim would be upheld against the estate of the deceased debtor where the claimant did not seek enforcement of the agreement, but probated the agreement for recovery of the indebtedness, which was a consideration for it. Estate of McKellar v. Brown, 404 So. 2d 550, 1981 Miss. LEXIS 2229 (Miss. 1981).

The statute of frauds is a personal right available to the party to an oral contract against whom enforcement is sought by the other party, and the plaintiff cannot invoke the statute for a defendant. Peaslee Gaulbert Paint & Varnish Co. v. Lumpkin, 238 Miss. 637, 119 So. 2d 772, 1960 Miss. LEXIS 448 (Miss. 1960).

Generally, an oral agreement to convey land by will or otherwise is within the statute of frauds, and specific performance of such agreement cannot be enforced. Estate of Collins v. Dunn, 233 Miss. 636, 103 So. 2d 425, 1958 Miss. LEXIS 426 (Miss. 1958).

Failure of answer to allege that oral contract violated statute did not preclude defendant from invoking such defense on appeal. Singletary v. Ginn, 153 Miss. 700, 121 So. 820, 1929 Miss. LEXIS 84 (Miss. 1929).

Failure to discharge mutual monetary obligations on verbal contract otherwise completed does not render contract unenforceable. Singletary v. Ginn, 153 Miss. 700, 121 So. 820, 1929 Miss. LEXIS 84 (Miss. 1929).

Plaintiff cannot rely on law of other state where declaration does not aver that oral promise sued on was made in that state. Craft v. Lott, 87 Miss. 590, 40 So. 426, 1905 Miss. LEXIS 208 (Miss. 1905).

If in a suit on a promissory note the defendants set up by way of set-off and testify to the terms of a parol contract between the parties and services rendered thereunder, it is competent for the plaintiff to state in evidence his version of the contract, even though the terms thereof, as testified to by plaintiff, make the contract within the statute. Timberlake v. Thayer, 76 Miss. 76, 23 So. 767, 1898 Miss. LEXIS 68 (Miss. 1898).

4. Parol evidence.

Nothing in the statute of frauds requires that the contract itself be in writing. The statute is satisfied so long as there is "some memorandum or note thereof." For the prevention of frauds, the statute merely prescribes the form a part of the evidence must take. Oral testimony regarding the fact is admissible as well. Where the writing has been destroyed or is presently unavailable, the parties may employ parol evidence to prove "both its existence and contents." The "memorandum or note" serves but to show a basis for believing that the offered oral evidence rests on a real action, and that a contract to sell has been made between the parties. Putt v. Corinth, 579 So. 2d 534, 1991 Miss. LEXIS 178 (Miss. 1991).

When a writing or memorandum is lost or destroyed, both its existence and contents may be proven by parol evidence; the loss or destruction of a memorandum does not deprive it of effect under the Statute of Frauds. Thus, § 15-1-29, § 15-1-73 and the Statute of Frauds (§ 15-3-1) did not bar an action to enforce a loan agreement which was allegedly destroyed in a fire where the plaintiff sufficiently proved the existence and contents of the destroyed memorandum. Williams v. Evans, 547 So. 2d 54, 1989 Miss. LEXIS 335 (Miss. 1989).

The rule that a written contract cannot be changed or modified by parol evidence of what was said and done by the parties at the time of making of the contract does not preclude the subsequent parol modification of the written contract, provided the contract is not one which under the statute is required to be in writing. Nason v. Morrissey, 218 Miss. 601, 67 So. 2d 506, 1953 Miss. LEXIS 576 (Miss. 1953).

When grantee or devisee obtains possession and title to land intended for another by actual fraud, on proof of the fraud a trust will be raised in favor of the latter, and the trust may be established by parol. Pitchford v. Howard, 208 Miss. 567, 45 So. 2d 142, 1950 Miss. LEXIS 275 (Miss. 1950).

5. Sufficiency of writing, generally.

The minutes of a city's public utility commission, which were signed by the president and secretary of the utilities commission, were approved at a subsequent meeting, and evidenced an intent to buy land, identify the land, and set out the purchase price, were sufficient to constitute a "memorandum or note" satisfying the statute of frauds. Putt v. Corinth, 579 So. 2d 534, 1991 Miss. LEXIS 178 (Miss. 1991).

Nonconsenting interest owner in natural gas unit whose interest was force integrated into drilling unit would only be liable for operating expenses upon payout; furthermore, consent by such interest owner to pay expenses sooner must be in writing and signed by owner to comply with statute of frauds in order to be enforceable. Hunt Energy Corp. v. Crosby-Mississippi Resources, Ltd., 732 F. Supp. 1378, 1989 U.S. Dist. LEXIS 16531 (S.D. Miss. 1989), aff'd, 979 F.2d 1533, 1992 U.S. App. LEXIS 31864 (5th Cir. 1992).

Description of land in a mineral lease as "being a part of the N ½ of SE ¼ and a part of the S ½ of the NE ¼ of Section 9, Township 2 N, Range 2 E, and containing 100 acres, more or less" is too vague to sustain its validity. Silvey v. Upton, 202 Miss. 485, 32 So. 2d 267, 1947 Miss. LEXIS 303 (Miss. 1947).

In order to comply with this section [Code 1942, § 264] the memorandum must contain words appropriate to, and indicating an intention thereby, to convey or lease land, must identify the land, set forth the purchase price, or, if a lease, the rent to be paid and the terms of payment. Gulf Refining Co. v. Travis, 201 Miss. 336, 29 So. 2d 100, 1947 Miss. LEXIS 399 (Miss. 1947).

Sale contract must describe land with reasonable certainty or identify other writings by aid of which description can be made reasonably certain. Taylor v. Sayle, 163 Miss. 822, 142 So. 3, 1932 Miss. LEXIS 91 (Miss. 1932).

Contract for sale of land which rests partly in writing and partly in parol is void. Taylor v. Sayle, 163 Miss. 822, 142 So. 3, 1932 Miss. LEXIS 91 (Miss. 1932).

Memorandum must contain substantial terms of contract so as to be understood from contract itself without resorting to parol evidence. Kervin v. Biglane, 144 Miss. 666, 110 So. 232, 1926 Miss. LEXIS 396 (Miss. 1926).

Written memorandum failing to state purchase price and terms was held insufficient to compel specific performance. Sturm v. Dent, 141 Miss. 648, 107 So. 277, 1926 Miss. LEXIS 476 (Miss. 1926).

However, acceptance of order free from ambiguity completes a contract. Allen & Co. v. Monroe County Hay Exchange, 123 Miss. 502, 86 So. 297, 1920 Miss. LEXIS 47 (Miss. 1920).

Seller accepting telegraph order in clear language cannot set up misunderstanding. Allen & Co. v. Monroe County Hay Exchange, 123 Miss. 502, 86 So. 297, 1920 Miss. LEXIS 47 (Miss. 1920).

A writing for the sale of land which designates the promisors as "Phillips & Bro." is not defective, under the statute of frauds, for want of parties. Langstaff Hardware Co. v. Wallace, 28 So. 871 (Miss. 1900).

Telegrams containing an order for the purchase of goods, and a reply, unless they show the substantial terms of the bargain, including the price, do not meet the requirements of the statute. Rector Provision Co. v. Sauer, 69 Miss. 235, 13 So. 623, 1891 Miss. LEXIS 135 (Miss. 1891).

If the writing disclose an uncertainty which parol evidence is not admissible to explain, it cannot be helped by an averment that the parties meant a particular thing. Fisher v. Kuhn, 54 Miss. 480, 1877 Miss. LEXIS 30 (Miss. 1877).

The word "promise" is used in the statute. The English originally used the word "agreement." Under our statute, the consideration need not be expressed in the writing, though it was necessary under the English. Wren v. Pearce, 12 Miss. 91, 1845 Miss. LEXIS 2 (Miss. 1845).

6. —Letters.

In a dispute brought by a father against his son to set aside a deed, had the parties not reached a settlement agreement, a chancery court would have been justified in awarding the son attorney's fees because the father's suit was frivolous; the deed did not reflect that the son was obligated to build a house on the property, and the only document that might have supported the father's argument was a letter that contained no signatures or any other acknowledgement from the son. Merideth v. Merideth, 986 So. 2d 363, 2008 Miss. App. LEXIS 388 (Miss. Ct. App. 2008).

Letters held insufficient to take out of the statute of frauds a primary contractor's alleged promise to pay a debt owed by a subcontractor to a subcontractor. Redd v. L & A Contracting Co., 246 Miss. 548, 151 So. 2d 205, 1963 Miss. LEXIS 478 (Miss. 1963).

Letter merely expressing an expectation to pay all claims was not a sufficient written promise to pay debt. Corinth, Shilo & Savannah Turnpike Co. v. Gooch, 113 Miss. 50, 73 So. 869, 1916 Miss. LEXIS 11 (Miss. 1916).

Letter held too vague and indefinite to constitute memorandum taking contract out of statute. Craft v. Lott, 87 Miss. 590, 40 So. 426, 1905 Miss. LEXIS 208 (Miss. 1905).

7. —Receipts.

A receipt reciting a certain sum as payment by the person named "on the place on which he now lives" is not a sufficient memorandum of the sale of land to satisfy the statute. Culpepper v. Chain, 202 Miss. 309, 32 So. 2d 266, 1947 Miss. LEXIS 278 (Miss. 1947).

A receipt by one other than the owner, acknowledging a down payment of a purchase price on certain lots and reciting that certain notes and a deed of trust were to be given for the balance, was insufficient as a memorandum of the contract of sale under this section [Code 1942, § 264], in that it failed to state in what county and state such lots were situated and it did not purport to be made on behalf of the owner of the property in question. Paine v. Mikell, 187 Miss. 125, 192 So. 15, 1939 Miss. LEXIS 88 (Miss. 1939).

Vendor's receipt for sum "to apply on purchase of land on the south side of the town of Darling, to be measured later and paid for at the rate of $30 per acre," held void for want of certainty. Nickerson v. Fithian Land Co., 118 Miss. 722, 80 So. 1, 1918 Miss. LEXIS 125 (Miss. 1918).

8. —Memoranda.

The promissory note signed by the parties satisfied the Statute of Frauds as a "memorandum or note", and because the grocery store was described both by name and physical address, the land was described with reasonable certainty. Theobald v. Nosser, 752 So. 2d 1036, 1999 Miss. LEXIS 399 (Miss. 1999).

Writing providing that for a money consideration plaintiff was given limited time within which to purchase from defendant a designated number of acres of timbered land, lying in two specified counties, at a certain price per acre, held insufficient, and parol evidence inadmissible to cure deficiency. Scherck v. Moyse, 94 Miss. 259, 48 So. 513, 1908 Miss. LEXIS 47 (Miss. 1908).

Memorandum must include all material features of agreement so that resort to parol testimony will be unnecessary, except to show situation of parties and application of terms of the contract. Gulfport Cotton Oil, Fertilizer & Mfg. Co. v. Reneau, 94 Miss. 904, 48 So. 292, 1909 Miss. LEXIS 346 (Miss. 1909).

A memorandum of a bargain of sale to the effect that the seller could spare the purchasers a specified quantity of corn, to be delivered at a stated time, is insufficient to take the sale out of the statute of frauds. Willis v. State, 27 So. 524 (Miss. 1900).

A memorandum in writing, to take a case out of the statute, must contain the substantial terms of the contract, so that they may be understood from the contract itself or some other writing to which it refers, without resorting to parol evidence. McGuire v. Stevens, 42 Miss. 724, 1869 Miss. LEXIS 41 (Miss. 1869); Waul v. Kirkman, 27 Miss. 823, 1854 Miss. LEXIS 136 (Miss. 1854).

9. More than one writing as constituting contract.

Memorandum of promise to answer for debt of another need not be in one writing. Central Shoe Co. v. J. P. Conn & Co., 160 Miss. 151, 133 So. 126, 1931 Miss. LEXIS 132 (Miss. 1931).

Telegrams and letter held sufficient memorandum to bind guarantor for payment of account. Central Shoe Co. v. J. P. Conn & Co., 160 Miss. 151, 133 So. 126, 1931 Miss. LEXIS 132 (Miss. 1931).

If paper signed by party sought to be charged makes such reference to another writing that, construing them together, all terms of bargain are expressed, it is sufficient, and parol evidence is admissible to identify paper referred to and apply reference. Central Shoe Co. v. J. P. Conn & Co., 160 Miss. 151, 133 So. 126, 1931 Miss. LEXIS 132 (Miss. 1931).

Memorandum may consist of several distinct writings, provided they are so related that the paper signed may be held to be an approval of the other documents. Gulfport Cotton Oil, Fertilizer & Mfg. Co. v. Reneau, 94 Miss. 904, 48 So. 292, 1909 Miss. LEXIS 346 (Miss. 1909).

Statement in letter of defendant held not to constitute acceptance of terms of contract as detailed in letter of plaintiff. Gulfport Cotton Oil, Fertilizer & Mfg. Co. v. Reneau, 94 Miss. 904, 48 So. 292, 1909 Miss. LEXIS 346 (Miss. 1909).

Statements in private letters of the owner of lands to his broker in regard to the latter's fee that he will sell it to a designated person are not alone sufficient to sustain a bill brought by such person for specific performance of a contract of sale. Keene v. Lowenthal, 83 Miss. 204, 35 So. 341, 1903 Miss. LEXIS 34 (Miss. 1903).

Telegrams containing an order for the purchase of goods, and a reply, unless they show the substantial terms of the bargain, including the price, do not meet the requirements of the statute. Rector Provision Co. v. Sauer, 69 Miss. 235, 13 So. 623, 1891 Miss. LEXIS 135 (Miss. 1891).

The memorandum may be in two or more writings, if they be connected physically or by internal reference. Fisher v. Kuhn, 54 Miss. 480, 1877 Miss. LEXIS 30 (Miss. 1877).

10. Delivery of writing as essential.

Stipulations in a contract for performance periods may be made to run from a specified date prior to the date of delivery. Hughes v. Franklin, 201 Miss. 215, 29 So. 2d 79, 1947 Miss. LEXIS 388 (Miss. 1947).

Memorandum of sale of standing timber, though complete in all other respects, is not sufficient compliance with statute of frauds, unless delivered to buyer. Howie v. Swaggard, 142 Miss. 409, 107 So. 556, 1926 Miss. LEXIS 99 (Miss. 1926).

Oral agreement to sell house and put purchaser in possession, followed by execution but not delivery of deed, was no change of interest. Osler v. Atlas Assurance Co., 127 Miss. 511, 90 So. 185, 1921 Miss. LEXIS 253 (Miss. 1921).

The writing, though complete in all other respects, is not sufficient unless it has been delivered. Jelks v. Barrett, 52 Miss. 315, 1876 Miss. LEXIS 216 (Miss. 1876); Johnson v. Brook, 31 Miss. 17, 1856 Miss. LEXIS 25 (Miss. 1856).

11. Signing of writing.

The statutory signing requirements of §§ 15-3-1, 89-1-3, 89-1-29 and 91-9-1 [repealed] were satisfied with respect to a deed of trust relating to homestead property, even though the wife neglected to sign the deed of trust document, where her signature appeared on the 2 attachments to the deed of trust-the property description and the adjustable rate mortgage rider-which constituted an integral part of the deed of trust. United Miss. Bank v. GMAC Mortgage Co., 615 So. 2d 1174, 1993 Miss. LEXIS 21 (Miss. 1993).

A contract to buy and sell lands signed by only two of the three owners is not null and void under § 15-3-1 where the owners who signed were acting as agents for the third owner who assented to and ratified both their actions and the terms of the contract. Hamilton v. Bradford, 502 F. Supp. 822, 1980 U.S. Dist. LEXIS 16367 (S.D. Miss. 1980).

A corporation's contract for architectural services satisfied the statute of frauds and the architectural firm could enforce the contract where it had been initialed by the corporation's vice president, and initialing was his usual way of authenticating a document, and where the same vice president wrote and signed a memorandum expressly referring to the contract; though the contract had subsequently been sent to the corporation's president for him to sign, and he had failed to do so, the vice president's signature was adequate since the jury had found that he had authority to execute the contract. Affiliated Invest., Inc. v. Turner, 337 So. 2d 1263, 1976 Miss. LEXIS 1606 (Miss. 1976).

Where a new highway eliminated an S-curve between the lands of the vendor and the adjoining landowner, and they made an oral exchange, void under the statute of frauds, whereby the title to all of the vendor's lands south of the highway would become vested in the adjoining landowner, and title to all of the landowner's land north of the present highway would be vested in the vendor, and where the adjoining landowner talked to the purchaser during a survey of the vendor's lot but made no claim to the land until construction of a house by the purchaser was completed, the purchaser having acted in good faith believing that he had title, the landowner was estopped to assert his legal title to the land north of the highway. Martin v. Franklin, 245 So. 2d 602, 1971 Miss. LEXIS 1381 (Miss. 1971).

It is not necessary that the contract should have been also signed by the party seeking to enforce it. Cooley v. Stevens, 240 Miss. 581, 128 So. 2d 124, 1961 Miss. LEXIS 488 (Miss. 1961).

A note or memorandum in writing, expressing the consideration, and subscribed by the party to be charged therewith, is not required in a contract of novation. Peaslee Gaulbert Paint & Varnish Co. v. Lumpkin, 238 Miss. 637, 119 So. 2d 772, 1960 Miss. LEXIS 448 (Miss. 1960).

Where both the original note and the instalment agreement indorsed on the back of the note were signed by the party charged with the payment of the indebtedness this section [Code 1942, § 264] was not applicable to the case. Freeman v. Truitt, 238 Miss. 623, 119 So. 2d 765, 1960 Miss. LEXIS 447 (Miss. 1960).

Officers' and directors' contract to pay all bank's losses held not within statute of frauds because schedule attached thereto was unsigned. Love v. Dampeer, 159 Miss. 430, 132 So. 439, 1931 Miss. LEXIS 62 (Miss. 1931).

But unsigned memorandum of terms of sale of standing timber is not covered by signature of vendor on back of check given him by vendee in part payment, unless it is referred to in check, or physically attached thereto in such manner as to be part thereof. Howie v. Swaggard, 142 Miss. 409, 107 So. 556, 1926 Miss. LEXIS 99 (Miss. 1926).

Written memorandum to answer debt of another, signed with initials not showing by whom or to whom payable, held within statute. Postal Tel. & Cable Co. v. Friedhof, 127 Miss. 498, 90 So. 182, 1921 Miss. LEXIS 251 (Miss. 1921).

Contract to sell timber, not signed by assignee, held enforceable by him against seller. Young v. Adams, 122 Miss. 1, 84 So. 1, 1920 Miss. LEXIS 412 (Miss. 1920).

Memorandum must be signed by party to be charged. Gulfport Cotton Oil, Fertilizer & Mfg. Co. v. Reneau, 94 Miss. 904, 48 So. 292, 1909 Miss. LEXIS 346 (Miss. 1909).

A written agreement for the sale of land is enforceable against a vendor who signed it, though neither the agreement nor any contract to pay the price was signed by the vendee, where such vendee afterwards offers in writing to perform the contract. Peevey v. Haughton, 72 Miss. 918, 17 So. 378, 1895 Miss. LEXIS 14 (Miss. 1895).

It is a sufficient compliance with the statute, if only "the party charged" shall have signed the writing, whether the other shall have signed or not. Marqueze v. Caldwell, 48 Miss. 23, 1873 Miss. LEXIS 31 (Miss. 1873); Williams v. Tucker, 47 Miss. 678, 1873 Miss. LEXIS 22 (Miss. 1873).

12. Partial performance, generally.

Part performance of an oral exclusive-dealer agreement will not take it out of the statute. Stahlman v. National Lead Co., 318 F.2d 388, 1963 U.S. App. LEXIS 5265 (5th Cir. Miss. 1963).

But contract for purchase and sale of corporate stock was held taken out of the statute by part performance. Pugh v. Gressett, 136 Miss. 661, 101 So. 691, 1924 Miss. LEXIS 170 (Miss. 1924).

Part performance, or any other thing, will not make an exception. Fisher v. Kuhn, 54 Miss. 480, 1877 Miss. LEXIS 30 (Miss. 1877).

13. Debt, default, or miscarriage of another, generally.

At the summary judgment stage, it could not be held that promissory and equitable estoppel foreclosed a guarantor's reliance on Miss. Code Ann. § 15-3-1 to avoid liability under a guaranty contract because there remained genuine issues of material fact as to whether the guarantor promised to pay the seller's customer's entire debt; there remained genuine issues of fact as to whether the seller relied to its detriment on the guarantor's signing of a guaranty where the evidence showed that although the seller did not do any further business with the customer, the seller asserted that in reliance on the guaranty, it did not repossess the equipment and materials that the customer had in her possession; and it could not be held as a matter of law that the guarantor could not reasonably have expected that the seller would rely on his alleged promise in this way. Sukup Mfg. v. Rushing, 634 F. Supp. 2d 694, 2009 U.S. Dist. LEXIS 49088 (S.D. Miss. 2009).

Where there existed a genuine issue of fact as to whether decedent contracted in his own behalf for claimant to repair his son's bulldozer, or whether the original obligation, which was not in writing, was on behalf of his son, the claimant was entitled to the opportunity to prove at an evidentiary hearing that his claim did not violate § 15-3-1(a). Crawler Parts, Inc. v. Hill, 441 So. 2d 1357, 1983 Miss. LEXIS 3052 (Miss. 1983).

One sued by a guarantor who has discharged its obligation cannot claim that under this statute the guarantor could not have been required to do so. Powell v. Sowell, 245 Miss. 53, 145 So. 2d 168, 146 So. 2d 576, 1962 Miss. LEXIS 531 (Miss. 1962).

The statute does not apply in the case of a sale made to a third person solely upon the credit of the promisor. Rotenberry v. Quitman County Farmers Ass'n, 238 Miss. 867, 120 So. 2d 566, 1960 Miss. LEXIS 474 (Miss. 1960).

Where a third party promised to pay for the damage sustained by the plaintiff, if the plaintiff would release second party involved in collision, the oral promise was within the statute of frauds inasmuch as the second party was still subject to suit. Harris v. Griffin, 226 Miss. 74, 83 So. 2d 765, 1955 Miss. LEXIS 608 (Miss. 1955).

And the test is whether the other person continues liable. Wade v. Long, 168 Miss. 434, 151 So. 564, 1934 Miss. LEXIS 338 (Miss. 1934).

Where promise to pay another's debt arises out of new and original consideration, moving between newly contracting parties, it is "original undertaking" and not within statute. Allen v. Smith & Brand, 160 Miss. 303, 133 So. 599, 1931 Miss. LEXIS 161 (Miss. 1931).

Where beneficiary of trust deed induced others to make loan to enable borrowers to pay trust deed, his promise to pay indebtedness within two years if borrowers failed to do so was within statute of frauds. Allen v. Smith & Brand, 160 Miss. 303, 133 So. 599, 1931 Miss. LEXIS 161 (Miss. 1931).

Promise to answer for debt, default, or miscarriage of another person, for which the other person himself continues liable, is within statute of frauds. Harris v. Griffin, 226 Miss. 74, 83 So. 2d 765, 1955 Miss. LEXIS 608 (Miss. 1955); Allen v. Smith & Brand, 160 Miss. 303, 133 So. 599, 1931 Miss. LEXIS 161 (Miss. 1931).

One cannot sue father for services rendered on son's plantation, unless father's promise to pay therefor is in writing. Hannah v. Covington, 155 Miss. 825, 125 So. 418, 1930 Miss. LEXIS 125 (Miss. 1930).

Whether one purchasing goods from plaintiff was running business for defendant held for jury. Ricketts v. Drew Grocery Co., 155 Miss. 459, 124 So. 495, 1929 Miss. LEXIS 312 (Miss. 1929).

Surety company held estopped to deny authority of agent delivering appeal bond, or that signature was binding on it. Champenois & Blanks v. Donald Co., 153 Miss. 719, 121 So. 485, 1929 Miss. LEXIS 77 (Miss. 1929).

But agreement between attorney and client fixing amount of former's fee and providing he was to pay costs in the Supreme Court if the case was reversed, held not within statute. Grace v. Floyd, 104 Miss. 613, 61 So. 694, 1913 Miss. LEXIS 77 (Miss. 1913).

The fact that goods were bought for and used by a person who is under no legal obligation to pay for them does not afford such a moral obligation as will support his verbal promise to pay, and this, too, though the person legally bound has escaped liability. Hendricks v. Robinson & Stevens, 56 Miss. 694, 1879 Miss. LEXIS 195 (Miss. 1879).

Where a person for whose use goods are purchased is liable to pay for them, any other promise by a third person to pay the debt is within the statute. Wallace v. Wortham, 25 Miss. 119, 1852 Miss. LEXIS 157 (Miss. 1852).

14. —Contractors, subcontractors and materialmen.

Once owner wholly satisfies his contract with defaulting contractor, subcontractors, laborers and materialmen have no lien on property or any valid claim against owner for debts owed by contractor, and any promise to pay more than was originally due contractor is gratuitous and is clearly within statute of frauds. B & G Crane Service, Inc. v. Dolphin Titan International, Inc., 762 F.2d 1292, 1985 U.S. App. LEXIS 30599 (5th Cir. La.), cert. denied, 474 U.S. 904, 106 S. Ct. 271, 88 L. Ed. 2d 232, 1985 U.S. LEXIS 3982 (U.S. 1985).

A verbal agreement by a property owner to pay materialmen for supplies they had furnished a contractor who abandoned construction of a house for the owner prior to its completion is invalid under the provisions of this section [Code 1942, § 264]. Phillips v. F. G. & H. Millwork Mfg. Co., 190 So. 2d 843, 1966 Miss. LEXIS 1399 (Miss. 1966).

Prime contractor's oral agreement to pay rental for machinery used by subcontractor is not within the statute where the owner of the machinery supposed that he was renting it to the prime contractor. General Electric Co. v. Hans, 242 Miss. 119, 133 So. 2d 275, 1961 Miss. LEXIS 537 (Miss. 1961).

15. —Oral promises.

As a deceased partner had not been personally liable to repay the other partner for unequal advances he made to the partnership, the former's alleged oral promise to repay the latter was a promise to pay another's debt that was unenforceable under Miss. Code Ann. § 15-3-1(a). In re Estate of Fitzner, 881 So. 2d 164, 2003 Miss. LEXIS 30 (Miss. 2003).

Assuming promise by president of mortgage company that borrower would not be required to repay loan was agreement to pay borrower's debt if borrower could not afford to do so himself, statute of frauds would be applicable, and borrower could not obtain specific performance of oral agreement; action for fraud can be maintained on basis of contract or promise that is itself unenforceable under statute of frauds, and therefore, while borrower could not recover on contract itself, assuming one existed, damages incurred in reliance on president's fraudulent oral promise are recoverable. Southern Mortg. Co. v. O'Dom, 699 F. Supp. 1223, 1987 U.S. Dist. LEXIS 14228 (S.D. Miss. 1987).

The oral contract by which a rice growers' association agreed to reimburse a warehouseman for certain handling-out charges in connection with the sale of stored grain belonging to the association's grower-members was not a special promise to answer for the debt or default of another where there was no binding and subsisting obligation on the part of the growers, or any other third party, to pay the charges, was not a contract of guaranty, but an enforceable contract binding upon the association. Mississippi Rice Growers Asso. v. Pigott, 191 So. 2d 399, 1966 Miss. LEXIS 1210 (Miss. 1966).

An oral agreement among creditors of an insolvent firm, including the holder of a trust deed to the firm's property, that all operating expenses incurred before a fixed date would be paid in cash was not a special promise to answer for the debt of another, but enforceable as a waiver of the mortgagee's prior claim to a suspended credits account which estopped the mortgagee, when operations ceased, from appropriating the fund to its own use in disregard of the respective claims of such other creditors who had deferred action to collect their overdue accounts on the strength of the agreement. Smaller War Plants Corp. v. Queen City Lumber Co., 200 Miss. 627, 27 So. 2d 531, 1946 Miss. LEXIS 333 (Miss. 1946).

Oral agreement by adult patient's father and brother that they would pay patient's hospital and medical bill if patient died held unenforceable as special promise to answer for another's debt. Wade v. Long, 168 Miss. 434, 151 So. 564, 1934 Miss. LEXIS 338 (Miss. 1934).

Where defendant orally promised plaintiff that if plaintiff would furnish certain third parties with goods she would see her paid, the promise was within the statute of frauds. Wray v. Cox, 86 Miss. 638, 38 So. 344, 1905 Miss. LEXIS 40 (Miss. 1905).

16. — Collateral obligation.

If party to whom consideration moves becomes personally liable for debt, another's promise to pay it, though made at same time, and upon same consideration, is "collateral undertaking" within statute. Allen v. Smith & Brand, 160 Miss. 303, 133 So. 599, 1931 Miss. LEXIS 161 (Miss. 1931).

Defendant contractor's promise to plaintiff subcontractor was unenforceable pursuant to the statute of frauds, Miss. Code Ann. § 15-3-1, as any promise by the contractor to pay a second subcontractor's debt was a collateral obligation subject to the statute of frauds; because plaintiff subcontractor was not harmed by relying on the contractor's alleged promise to satisfy the second subcontractor's debt, equitable estoppel was not applicable. McLane Servs. v. Alstom Power, Inc., 2006 U.S. Dist. LEXIS 39973 (S.D. Miss. June 5, 2006).

If person making promise enters into original obligation, statute of frauds does not apply, and if he enters into collateral obligation, it does. Allen v. Smith & Brand, 160 Miss. 303, 133 So. 599, 1931 Miss. LEXIS 161 (Miss. 1931).

17. —Consideration.

In an action on an open account wherein it was alleged that the plaintiff had agreed with a third party, which was indebted to the defendants in an amount in excess of the account, to transfer the defendants' account and to look to the third party for payment, the contract of substitution, if consummated, constituted a novation, and it was not necessary for the third party to sign a writing for the purpose of showing consideration. Peaslee Gaulbert Paint & Varnish Co. v. Lumpkin, 238 Miss. 637, 119 So. 2d 772, 1960 Miss. LEXIS 448 (Miss. 1960).

Where the assumption is simultaneous with the creation of the debt, the test of liability is whether the person who received the consideration was or was not bound. Bloom v. McGrath & Compton, 53 Miss. 249, 1876 Miss. LEXIS 61 (Miss. 1876).

The receipt or nonreceipt of the consideration by the party promising does not determine, in every case, whether the promise be within or without the statute, but the question remains whether he assumed an independent obligation or whether responsibility be contingent. Olive v. Lewis, 45 Miss. 203, 1871 Miss. LEXIS 69 (Miss. 1871).

18. —Consideration or benefit flowing to promisor.

The agreement of an employer to pay for the debt, default, or miscarriage of his employee failed not only for want of consideration but also because it was not in writing. Forrest County Cooperative Asso. v. McCaffrey, 253 Miss. 486, 176 So. 2d 287, 1965 Miss. LEXIS 1007 (Miss. 1965).

Oral modification of contract between principal contractor and subcontractor, whereby principal contractor guaranteed payment of premiums on subcontractor's liability insurance in consideration of agreement that they should be paid out of monthly earnings, did not violate statute of frauds, since he was binding himself to answer in a special manner for his own debt. Hartford Acci. & Indem. Co. v. Hewes, 193 Miss. 850, 11 So. 2d 309, 1943 Miss. LEXIS 11 (Miss. 1943).

Oral agreement of second mortgagee that if mortgagor would pay part of indebtedness secured by first trust deed, and if third party would advance remainder of indebtedness to prevent foreclosure of first trust deed, third party should have first lien on land covered, held valid and binding. Taylor v. Phillips, 182 Miss. 539, 181 So. 855, 1938 Miss. LEXIS 192 (Miss. 1938).

Alleged oral promise of president of lessor of golf course to pay laborers and materialmen who contracted with lessee to make repairs and improvements was void, since it was promise to answer for debt or miscarriage of another person which promise had to be in writing. Wenger v. First Nat'l Bank, 174 Miss. 311, 164 So. 229, 1935 Miss. LEXIS 71 (Miss. 1935).

Entries showing goods were charged to tenant could be explained by showing original agreement for sale on credit to landlord; oral agreement to sell goods on credit to landlord for himself and tenant, but to enter charges against tenant, made landlord primarily liable and did not violate statute of frauds. Benson v. Berry-Dampeer Co., 158 Miss. 237, 130 So. 157, 1930 Miss. LEXIS 40 (Miss. 1930).

Promise to answer for another's debt or default supported by independent consideration flowing to promisor is not within statute; statute does not apply to novation. True-Hixon Lumber Co. v. McDonough, 154 Miss. 720, 123 So. 855, 1929 Miss. LEXIS 181 (Miss. 1929).

Agreement to pay for cars furnished by railroad to third party for promisor, if destroyed by fire, held not within statute. Home Ins. Co. v. Moore & Rawls, 151 Miss. 189, 117 So. 524, 1928 Miss. LEXIS 293 (Miss. 1928).

Promise of vendor's agent to purchaser to pay taxes out of purchase money received from purchaser held not promise to answer for debt or default or miscarriage of another. Palmer v. Bridges, 151 Miss. 12, 117 So. 328, 1928 Miss. LEXIS 272 (Miss. 1928).

Performance of duty of third person involving only application of funds or discharge of duty owing by promisor is not within statute. Palmer v. Bridges, 151 Miss. 12, 117 So. 328, 1928 Miss. LEXIS 272 (Miss. 1928).

Agreement of owner of building to become liable as surety for material furnished contractor is within statute. Vicksburg Mfg. & Supply Co. v. J. H. Jaffray Constr. Co., 94 Miss. 282, 49 So. 116, 1908 Miss. LEXIS 57 (Miss. 1908).

Agreement of traveling salesman to pay 50 per cent of losses on customers dealt with by him, being part of his contract of employment, is not within statute. Meyer-Bridges Co. v. Badeau, 90 Miss. 27, 43 So. 609, 1907 Miss. LEXIS 78 (Miss. 1907).

Where a debtor conveyed his stock of goods in consideration of a promise of the buyer to pay certain of the debtor's debts, the promise is not within the statute of frauds. Wear & Boogher Dry Goods Co. v. Kelly, 84 Miss. 236, 36 So. 258, 1904 Miss. LEXIS 34 (Miss. 1904).

A promise made to a debtor to pay a debt which he owes to a third person is not within the statute. Ware v. Allen, 64 Miss. 545, 1 So. 738, 1886 Miss. LEXIS 106 (Miss. 1886).

Where the vendee of land agreed to pay a part of the purchase-money to a creditor of the vendor, the agreement is, not to pay the debt of another, but to pay his own debt to a person other than his own creditor, and it is not within the statute. Lee v. Newman, 55 Miss. 365, 1877 Miss. LEXIS 143 (Miss. 1877).

19. —Promise to indemnify surety.

Oral promise to reimburse plaintiff as surety on bond of defendant's father for any loss he might incur by reason of his suretyship held within statute. Craft v. Lott, 87 Miss. 590, 40 So. 426, 1905 Miss. LEXIS 208 (Miss. 1905).

An oral promise to indemnify a person for becoming surety on another's bail bond is within the statute. May v. Williams, 61 Miss. 125, 1883 Miss. LEXIS 84 (Miss. 1883).

20. Agreement upon consideration of marriage.

Special chancellor committed manifest error and was clearly erroneous in dismissing a former wife's contempt action against her former husband because the parties' agreement and the final decree of divorce complied with the writing and signature requirements of the statute of frauds; the agreement was an enforceable contract that satisfied the statute of frauds because the husband signed the agreement, and the agreement was confirmed in the judgment Jones v. Jones, 239 So. 3d 1091, 2018 Miss. App. LEXIS 106 (Miss. Ct. App. 2018).

Oral agreement of prospective husband to renounce rights in realty of prospective bride is void. Pardue v. Ardis, 101 Miss. 884, 58 So. 769, 1912 Miss. LEXIS 22 (Miss. 1912).

An agreement to convey, in consideration of marriage, a tract of land of a certain value, is void under the statute, where the promisor has four tracts of that value, and the writing contains nothing to identify the one referred to, except that it was to be chosen by the promisee, although the marriage is consummated on the faith of the promise. Cole v. Cole, 99 Miss. 335, 54 So. 953, 1910 Miss. LEXIS 30 (Miss. 1910).

An agreement is not within the statute, as upon consideration of marriage, where it is made after the contract to marry has become binding, though it is in contemplation of marriage. Steen v. Kirkpatrick, 84 Miss. 63, 36 So. 140, 1904 Miss. LEXIS 8 (Miss. 1904).

An agreement made in contemplation of marriage after the contract to marry has become binding is not an agreement in consideration of marriage within the meaning of this section [Code 1942, § 264]. Steen v. Kirkpatrick, 84 Miss. 63, 36 So. 140, 1904 Miss. LEXIS 8 (Miss. 1904).

21. Sale or lease of land, generally.

Chancellor property dismissed purchasers' breach of contract claim because no writing memorialized the purported contract that they alleged had been breached. Elchos v. Haas, 178 So. 3d 1183, 2015 Miss. LEXIS 504 (Miss. 2015).

Appellate court affirmed the grant of summary judgment in favor of defendant as there was no intent to form a joint venture to buy property by defendant and plaintiff, and thus, Miss. Code Ann. § 15-3-1(c) required a written document to transfer an interest in land which did not exist here. Roffman v. Wilson, 914 So. 2d 279, 2005 Miss. App. LEXIS 783 (Miss. Ct. App. 2005).

The principal purpose of the statute of frauds is to require the contracting parties to reduce to writing the specific terms of their contract, especially an agreement affecting lands for more than one year, and thus to avoid dependence on the imperfect memory of the contracting parties, after the passage of time, as to the terms of the contract. Sharpsburg Farms, Inc. v. Williams, 363 So. 2d 1350, 1978 Miss. LEXIS 2205 (Miss. 1978).

A contract to furnish sand is not one pertaining to the sale of lands. Morgan v. Jackson Ready-Mix Concrete, 247 Miss. 863, 157 So. 2d 772, 1963 Miss. LEXIS 365 (Miss. 1963).

The defense of the statute is personal and may not be raised by a third party. Davis v. Stegall, 246 Miss. 593, 151 So. 2d 813, 1963 Miss. LEXIS 485 (Miss. 1963).

The statute [Code 1942, § 264] does not make a contract void but only allows the defense to its enforcement. Davis v. Stegall, 246 Miss. 593, 151 So. 2d 813, 1963 Miss. LEXIS 485 (Miss. 1963).

An option to purchase land is required to be in writing. Nason v. Morrissey, 218 Miss. 601, 67 So. 2d 506, 1953 Miss. LEXIS 576 (Miss. 1953).

Memorandum agreement for sale of land which does not expressly promise merely quitclaim deed raises presumption that warranty deed was intended, as it is general usage and custom of purchasers to demand and receive warranty deeds. Jones v. Hickson, 204 Miss. 373, 37 So. 2d 625, 1948 Miss. LEXIS 376 (Miss. 1948).

The payment of the purchase price for land, or the agreed rental therefor, does not eliminate the need for a proper written instrument. Gulf Refining Co. v. Travis, 201 Miss. 336, 29 So. 2d 100, 1947 Miss. LEXIS 399 (Miss. 1947).

Defendant held estopped from asserting invalidity of his oral agreement to pay materialman where because of such agreement materialman failed to protect his lien. Delta Lumber Co. v. Wall, 119 Miss. 350, 80 So. 782, 1919 Miss. LEXIS 9 (Miss. 1919).

Where an offer to purchase land presents two alternative propositions a mere acceptance of the offer without specifying which proposition is accepted does not create a contract which can be specifically enforced. Welsh v. Williams, 85 Miss. 301, 37 So. 561, 1904 Miss. LEXIS 136 (Miss. 1904).

Two persons, each owner of land under bond for title, cannot exchange the tracts by changing possession and delivering their respective title-bonds to each other. Connor v. Tippett, 57 Miss. 594, 1880 Miss. LEXIS 8 (Miss. 1880).

22. —Applicability.

Any modification of a contract that comes under the statute of frauds must be in writing, including modifications to contract for the purchase of land. Favre Prop. Mgmt., LLC v. Cinque Bambini, 863 So. 2d 1037, 2004 Miss. App. LEXIS 32 (Miss. Ct. App. 2004).

The statute of frauds pertaining to a claim for an interest in real property does not apply as a bar to a suit seeking adjudication of the existence of a partnership and for an accounting, since the partnership was a fiduciary relationship. Kelly v. Windham, 204 So. 2d 477, 1967 Miss. LEXIS 1206 (Miss. 1967).

The statute [Code 1942, § 264] applies to the sale of realty at auction. Though the auctioneer act as the agent of both parties, seller and buyer, yet, in order to make the sale valid, the auctioneer or his clerk must, at the time of the sale, make a sufficient memorandum. Jelks v. Barrett, 52 Miss. 315, 1876 Miss. LEXIS 216 (Miss. 1876).

Parol partition of lands between co-owners, followed by occupancy in severalty, is valid. Pipes v. Buckner, 51 Miss. 848, 1876 Miss. LEXIS 150 (Miss. 1876); Wildey v. Bonney's Lessee, 31 Miss. 644, 1856 Miss. LEXIS 135 (Miss. 1856).

And it does not embrace cases of trust. Jones v. M'Dougal, 32 Miss. 179 (Miss. 1856).

This part [Code 1942, § 264] of the statute has reference alone to the sale of lands, and not to a contract to purchase by one person for the benefit of another. Soggins v. Heard, 31 Miss. 426, 1856 Miss. LEXIS 90 (Miss. 1856).

The statute [Code 1942, § 264] does not apply to a contract for the parties to become jointly interested in a purchase about to be made. Evans v. Green, 23 Miss. 294, 1852 Miss. LEXIS 205 (Miss. 1852).

A sheriff's sale is not within the statute. He is the agent of both parties, and his memorandum is sufficient to take the case out of it. Endicott v. Penny, 22 Miss. 144, 1850 Miss. LEXIS 114 (Miss. 1850).

23. —Necessary terms.

The chancellor properly refused to order specific performance of a contract for the sale of land where the description within the contract was ambiguous, referring to both the east-west and north-south dimensions of the land in approximate terms, and referring to no monument establishing the northern boundary of the lot in question, and where both the plaintiff's interpretation and the defendant's interpretation of the lot dimensions from the description were too vague and uncertain to justify a judicial sanction. McCarty v. Lawrence, 231 So. 2d 775, 1970 Miss. LEXIS 1602 (Miss. 1970).

Memorandum of agreement to sell realty interest, to satisfy this section [Code 1942, § 264] must contain the substantial terms of the contract expressed with such certainty that they may be understood from the contract itself, or some other writing to which it refers, without resorting to parol evidence, and when reference is made in the memorandum to another writing, it must be so clear as to prevent the possibility of one paper being substituted for another. Hamilton v. Morrison, 146 F.2d 533, 1945 U.S. App. LEXIS 3506 (5th Cir. Miss. 1945).

One of the necessary terms of contract to sell interest in land is a sufficient description of the land. Hamilton v. Morrison, 146 F.2d 533, 1945 U.S. App. LEXIS 3506 (5th Cir. Miss. 1945).

An agreement to convey, in consideration of marriage, a tract of land of a certain value, is void under the statute, where the promisor has four tracts of that value, and the writing contains nothing to identify the one referred to, except that it was to be chosen by the promisee, although the marriage is consummated on the faith of the promise. Cole v. Cole, 99 Miss. 335, 54 So. 953, 1910 Miss. LEXIS 30 (Miss. 1910).

24. —Oral promises and contracts.

In an action by the buyers for specific performance of a real estate contract, the court rejected the sellers' contention that the statute of frauds barred relief because the buyers failed to submit a written contract within 30 days after an oral agreement for the purchase of the property was read into the record in court, as a written contract had already been entered into by the parties that contained sufficient terms to withstand the statute of frauds, and the oral agreement merely contained elaborations on the contract. Brown v. Thomas, 757 So. 2d 1091, 2000 Miss. App. LEXIS 214 (Miss. Ct. App. 2000).

In action by plaintiff timber company against defendant timber company alleging that defendant fraudulently induced plaintiff to purchase certain property by orally promising that defendant, which had previously acquired timber rights on such property, would sell or trade such timber to plaintiff after plaintiff subsequently purchased such property, plaintiff's fraudulent inducement claim was barred even if it could have been raised under state's general statute of frauds, because alleged promise to convey timber rights was contract for sale of "goods" subject to statute of frauds. T.K. Stanley, Inc. v. Scott Paper Co., 793 F. Supp. 707, 1992 U.S. Dist. LEXIS 9416 (S.D. Miss. 1992), aff'd, 5 F.3d 529, 1993 U.S. App. LEXIS 24816 (5th Cir. Miss. 1993).

In an action to recover the purchase price for the sale of borrow material from plaintiff seller's land, the oral contract was governed by the statute of frauds affecting the transfer of an interest in land. Bell v. Hill Bros. Constr. Co., 419 So. 2d 575, 1982 Miss. LEXIS 2142 (Miss. 1982).

Code 1942, § 264 does not require a cancellation of a lease to be in writing. Perkins v. Blackledge, 285 So. 2d 761, 1973 Miss. LEXIS 1297 (Miss. 1973).

An oral agreement on the part of mother that if her daughter would return to Mississippi and there operate a flower shop and discharge the construction lien thereon she would convey the flower shop property to the daughter was unenforceable under the statute of frauds. Fletcher v. Nemitz, 186 So. 2d 232, 1966 Miss. LEXIS 1300 (Miss. 1966).

Where a landowner expressly consents or agrees that the building erected on his land does not become realty but remains the property of the person annexing it, the agreement may be oral and is not within the statute of frauds since this agreement involves no sale of interest of land. Connolly v. McLeod, 212 Miss. 133, 52 So. 2d 473, 1951 Miss. LEXIS 435 (Miss. 1951).

Contracts by parol for land are generally regarded as voidable merely, and when vendor is able and willing to perform, vendee cannot recover what he has paid if vendee avoids contract. Vanlandingham v. Jenkins, 207 Miss. 882, 43 So. 2d 578, 1949 Miss. LEXIS 399 (Miss. 1949).

Earnest money paid by vendee on making of oral contract for purchase of realty is liquidated damages and not a penalty, and if vendor is willing and able to perform contract it cannot be recovered back on repudiation of transaction by vendee. Vanlandingham v. Jenkins, 207 Miss. 882, 43 So. 2d 578, 1949 Miss. LEXIS 399 (Miss. 1949).

Purchaser under parol contract for sale of land may recover any amounts paid vendor as for money had and received, when vendor refuses to complete transaction by execution of necessary deed, but he cannot sue for specific performance, since the oral contract is unenforceable under statute of frauds. Hardy v. Candelain, 204 Miss. 328, 37 So. 2d 360, 1948 Miss. LEXIS 370 (Miss. 1948).

A suit to establish a resulting trust arising out of the conveyance of land to a third party pursuant to an oral agreement whereby one person was to advance all funds necessary to purchase the land and another was to repay him half of the amount, each to acquire an undivided one-half interest, with an understanding that the deed would be executed to such third party to be held by her until the loan was repaid, was not an effort to enforce an oral contract for the purchase of land. Shepherd v. Johnston, 201 Miss. 99, 28 So. 2d 661, 1947 Miss. LEXIS 374 (Miss. 1947).

This section [Code 1942, § 264] did not preclude relief to the complainant by way of a conveyance of the land involved where a money lender paid the purchase price of land on behalf of the complainants who were then lessees in possession thereof, and took title thereof in his own name as security for the purchase price under an oral agreement to convey it to the complainant upon payment of the purchase price. Tanous v. White, 186 Miss. 556, 191 So. 278, 1939 Miss. LEXIS 243 (Miss. 1939).

Where the executrix under the will of the grantor in a deed of trust, which will devised the land secured by such deed of trust to the executrix and two minor children, and vested the executrix with power to convey the land by deed or otherwise, entered into an oral agreement with a holder of bonds issued under such deed of trust, to consent to a foreclosure thereof, and purchase of the property at such foreclosure sale by the bondholder, the oral agreement was not within the purview of the statute of frauds in view of the fact that such agreement was fully performed by the bondholder by advancing the tax redemption money and a loan to the executrix, the institution and completion of the foreclosure proceeding, consented to by all of the parties to the agreement, and the delivery of possession of the land by the executrix to the purchaser at such sale. Wirtz v. Gordon, 187 Miss. 866, 184 So. 798, 1938 Miss. LEXIS 321 (Miss. 1938).

A prenuptial parol contract as to the rights of the parties about to be married, in the real estate of each other, is not enforceable. Steen v. Kirkpatrick, 84 Miss. 63, 36 So. 140, 1904 Miss. LEXIS 8 (Miss. 1904).

A lender of money to a borrower to pay off a mortgage on his homestead, on his verbal promise to secure the debt by a deed of trust on the land, cannot enforce the verbal promise, nor will he be subrogated to the right of the mortgagee whose mortgage was satisfied. Berry v. Bullock, 81 Miss. 463, 33 So. 410, 1902 Miss. LEXIS 178 (Miss. 1902).

An agreement between plaintiff and defendant in an action of ejectment, by which judgment was entered for the plaintiff for the whole of the land sued for, but the execution was to be restricted to a part, is not within the statute. Natchez v. Vandervelde, 31 Miss. 706, 1856 Miss. LEXIS 144 (Miss. 1856).

25. —Abstract of title.

Where contract for sale and purchase of land contains stipulation obligating vendor to furnish abstract of his title to vendee, but no particular time is fixed in which it is to be furnished, implication arises that abstract is to be furnished within reasonable time in view of all circumstances, and compliance by vendor with this implication is obligatory. Vanlandingham v. Jenkins, 207 Miss. 882, 43 So. 2d 578, 1949 Miss. LEXIS 399 (Miss. 1949).

When vendor has reason to believe that abstract of his title will not be required at all by vendee, he is entitled to reasonable time for furnishing it when thereafter demanded, and vendee has no right to rescind contract to purchase without giving reasonable time for the furnishing of abstract of title. Vanlandingham v. Jenkins, 207 Miss. 882, 43 So. 2d 578, 1949 Miss. LEXIS 399 (Miss. 1949).

26. —Latent defects.

Extrinsic evidence may be used to repair a latent defect in a description to land if the clue to certainty, and thus avoidance of the statute of frauds, is contained in the writings. Frostad v. Kitchens, 377 F.2d 475, 1967 U.S. App. LEXIS 6466 (5th Cir. Miss. 1967).

Memorandum agreement for sale of 120 acres, "Old Hatcher Place" is not void for failure to meet requirements of statute of frauds, since omission of state and county is latent defect which may be repaired by extrinsic evidence where there are other means of local identification. Jones v. Hickson, 204 Miss. 373, 37 So. 2d 625, 1948 Miss. LEXIS 376 (Miss. 1948).

27. —Mortgages.

Summary judgment was properly awarded to a mortgagee in a mortgagor's action for wrongful foreclosure because an alleged agreement between the mortgagor and a bank teller that the mortgagor's two payments on the loan would stop foreclosure proceedings was barred by the statute of frauds; there was no additional consideration for the alleged forbearance by the mortgagee. Thompson v. First Am. Nat'l Bank, 19 So. 3d 784, 2009 Miss. App. LEXIS 214 (Miss. Ct. App. 2009).

In a suit by grantors for cancellation of deed alleged to have been given as a mortgage, where the deed was in fact a mortgage, and not a sale with all obligation to resell the land reconveyed, the grantee could not use the statute of frauds as a defense and equity had the power to cancel the deed, as well as a subsequent deed from the grantee to a person not innocent purchaser for value. Emmons v. Emmons, 217 Miss. 594, 64 So. 2d 753, 1953 Miss. LEXIS 467 (Miss. 1953).

A lender of money to a borrower to pay off a mortgage on his homestead, on his verbal promise to secure the debt by a deed of trust on the land, cannot enforce the verbal promise, nor will he be subrogated to the right of the mortgagee whose mortgage was satisfied. Berry v. Bullock, 81 Miss. 463, 33 So. 410, 1902 Miss. LEXIS 178 (Miss. 1902).

28. —Miscellaneous.

Trail court did not err by rejecting a seller's notion that a writing was merely an undelivered gift inter vivos because the purchaser could have asserted equity rights, certainly more than a mere "dispute or controversy" between himself and the seller over the property; the seller's own hand-picked wording in the writing acknowledged that the contract was made after the seller received good and valuable consideration. Swartzfager v. Saul, 213 So. 3d 55, 2017 Miss. LEXIS 67 (Miss. 2017).

Trial court properly rule for a purchaser in his action seeking damages and specific performance because the seller's writing, along with the purchaser's mapped out description, constituted a valid, enforceable agreement for the sale of property under the Statute of Frauds; the seller's writing did not fail to include a price to be paid but did not include the price already paid, and consideration had already changed hands, specifically the purchaser's forbearance of any claim to the property. Swartzfager v. Saul, 213 So. 3d 55, 2017 Miss. LEXIS 67 (Miss. 2017).

Where defendant, an industrial plant seller, had ongoing discussions with plaintiff potential purchasers after the potential purchasers' closing date had passed, and there was no evidence that an agreement was actually reached as to a change in financing, a change in financing was a substantial change that could not be enforced under Miss. Code Ann. § 15-3-1(c)'s statute of frauds, and thus, when the seller sold the property to different buyer, the seller was granted summary judgment on the potential purchaser's breach of contract claim. Fibre Corp. v. GSO Am., Inc., 2005 U.S. Dist. LEXIS 37906 (S.D. Miss. Dec. 8, 2005).

In an action by a homeowners' association to enforce a lien on defendant's property after defendant had failed to pay an annual assessment to the association for maintenance of common areas, the chancery court properly ruled that the assessment was a covenant running with the land and that defendant was liable, despite defendant's contentions that the action was barred by the statute of frauds since there was no signed writing binding defendant to pay the fee, and since the amount of the assessment was not set forth in the deed; the deed provided that defendant was required to pay an assessment, and defendant could not claim the benefit conferred by the deed and renounce the covenant. The statute of frauds has no application to a covenant running with the land even though the covenant imposes a burden on the land. William W. Bond, Jr. & Associates, Inc. v. Lake O'The Hills Maintenance Asso., 381 So. 2d 1043, 1980 Miss. LEXIS 1919 (Miss. 1980).

Where a brother, who had no written authorization to represent his sister, without mentioning the sister's name entered into a contract to sell to another a parcel of the sister's land, the contract was not enforceable as against the sister. Leavenworth v. Lloyd, 229 Miss. 880, 92 So. 2d 224, 1957 Miss. LEXIS 337 (Miss. 1957).

Signed receipts indicating a sale for $8,000, $20 cash and balance due at a named date, of "¼ royalty under 113 acres of land" in a named county, did not constitute a sufficient memorandum to satisfy this section [Code 1942, § 264] as neither the land nor the kind of royalty was described, and fact that purchaser in seller's presence folded the first receipt and transfer form together and kept them was unavailing. Hamilton v. Morrison, 146 F.2d 533, 1945 U.S. App. LEXIS 3506 (5th Cir. Miss. 1945).

Land contract, though within statute of frauds and unenforceable, not void; until its affirmance by vendor of land contract within statute of frauds, relation of parties, that of vendor and purchaser, and not that of landlord and tenant; vendor, disaffirming land contract within statute of frauds, not entitled to recover from purchaser for use and occupation of premises for period between making of contract and disaffirmance. Harvey v. Daniels, 133 Miss. 40, 96 So. 746, 1923 Miss. LEXIS 109 (Miss. 1923).

A written agreement for the sale of land is enforceable against a vendor who signed it, though neither the agreement nor any contract to pay the price was signed by the vendee, where such vendee afterwards offers in writing to perform the contract. The offer makes the contract mutual, and it cannot be said that there is a want of consideration. Peevey v. Haughton, 72 Miss. 918, 17 So. 378, 1895 Miss. LEXIS 14 (Miss. 1895).

29. —Part performance of contract of sale.

Neither part performance of an oral contract with respect to the sale of land, nor the expenditure of money in reliance upon it, are sufficient to take it out of the statute of frauds. Reid v. Horne, 187 So. 2d 316, 1966 Miss. LEXIS 1347 (Miss. 1966).

Under an oral contract for the cutting and hauling of pulpwood to the railroad and loading the same on cars for shipment to defendants, with a guarantee to the plaintiff of employment under the contract for a period of not less than two years, the supplying of pulpwood for a period of four months did not constitute such part performance as to take the case out of the operation of statute of fraud. Poole v. Johns-Manville Products Corp., 210 Miss. 528, 49 So. 2d 891, 1951 Miss. LEXIS 291 (Miss. 1951).

Statute of frauds was inapplicable to preclude enforcement of a will executed in complainant's favor pursuant to an oral agreement to make such will in return for the caring of deceased by complainant, even though the agreement and the will contemplated the transfer of land, where the complainant performed her part of the agreement but the deceased subsequently executed a new will leaving all his property to another, since the oral agreement was completely executed. Johnston v. Tomme, 199 Miss. 337, 24 So. 2d 730, 1946 Miss. LEXIS 202 (Miss. 1946).

Part performance of oral contract for sale of land does not take case out of statute requiring such contracts to be in writing. Wells v. Brooks, 199 Miss. 327, 24 So. 2d 533, 1946 Miss. LEXIS 201 (Miss. 1946); Milam v. Paxton, 160 Miss. 562, 134 So. 171, 1931 Miss. LEXIS 194 (Miss. 1931).

Parol promise that deceased's realty and personalty would some day belong to the promisees if they continued to look after deceased's property, was unenforceable under the statute of frauds, where the promisees were never placed in possession of such property, irrespective of whether the transfer of the property was to be by will, deed or otherwise, and regardless of whether the promisees performed their part of the arrangement. Wells v. Brooks, 199 Miss. 327, 24 So. 2d 533, 1946 Miss. LEXIS 201 (Miss. 1946).

Where parol agreement that deceased's property will someday belong to certain persons if they continue looking after such property, includes both realty and personalty, the transaction is not separable in respect to enforceability under statute of frauds. Wells v. Brooks, 199 Miss. 327, 24 So. 2d 533, 1946 Miss. LEXIS 201 (Miss. 1946).

Unpaid purchase money gives rise to enforceable equitable vendor's lien independent of contract. Haden v. Sims, 168 Miss. 64, 150 So. 210, 1933 Miss. LEXIS 167 (Miss. 1933).

Provision of contract that purchaser bought on conditions announced by auctioneer held not to entitle vendor to specific performance on parol showing that land which vendor could not convey was excepted by auctioneer. Taylor v. Sayle, 163 Miss. 822, 142 So. 3, 1932 Miss. LEXIS 91 (Miss. 1932).

In the absence of writing identifying land, stating purchase price and terms of payment, vendee under oral contract was not entitled to specific performance. Milam v. Paxton, 160 Miss. 562, 134 So. 171, 1931 Miss. LEXIS 194 (Miss. 1931).

Part performance will not take parol sale of lands out of statute of frauds; exceptions to statute of frauds on account of part performance will not be ingrafted on statute; fact that vendor fraudulently evaded part of agreement to reduce part of contract to writing is not sufficient to take case out of statute. Howie v. Swaggard, 142 Miss. 409, 107 So. 556, 1926 Miss. LEXIS 99 (Miss. 1926).

Acceptance of part of purchase price does not render valid parol contract for sale of land, nor estop acceptor from refusing to carry out contract. Howie v. Swaggard, 142 Miss. 409, 107 So. 556, 1926 Miss. LEXIS 99 (Miss. 1926).

The statute does not prevent recovery from the vendee of land, who has taken possession under a conveyance for part cash and part to be paid in installments, to secure which a lien is reserved on the unpaid purchase money, although the vendee may have signed no written promise to pay. Washington v. Soria, 73 Miss. 665, 19 So. 485, 1896 Miss. LEXIS 190 (Miss. 1896).

30. —Promise to reconvey.

Oral agreement by purchaser of land at foreclosure sale, to reconvey property to former owner upon payment of purchase price plus interest within 90 days of sale, was unenforceable option contract under statute of frauds; former owner failed to satisfy burden of proving exception to statute of frauds. Dew v. Langford, 666 So. 2d 739, 1995 Miss. LEXIS 594 (Miss. 1995).

An oral agreement between the grantor and grantee to cancel a deed does not satisfy the statute of frauds even though an attorney purporting to represent both parties enters a notation on the margin of the record to the effect that the deed is so cancelled. Wilson v. Combs, 203 Miss. 286, 33 So. 2d 830, 1948 Miss. LEXIS 266 (Miss. 1948).

An oral executory promise by grantee to reconvey land to grantors if latter not satisfied is void under the statute of frauds. Carter v. Dabbs, 196 Miss. 692, 18 So. 2d 747, 1944 Miss. LEXIS 250 (Miss. 1944).

Alleged oral agreement between former owner of tax forfeited land and holders of patents thereto from state, that the latter would reconvey to him upon payment by him of the moneys expended for the patents, was not effective to create a constructive trust and was unenforceable under this section [Code 1942, § 264]. Lewis v. Williams, 186 Miss. 701, 191 So. 479, 1939 Miss. LEXIS 256 (Miss. 1939).

An oral agreement between the parties to reduce the parol promise to reconvey to writing is void and does not take the case out of the statute. Lewis v. Williams, 186 Miss. 701, 191 So. 479, 1939 Miss. LEXIS 256 (Miss. 1939).

Nor can an oral contract to sell or reconvey, or for the sale of land, be specifically enforced in a court of equity, even though it be partially performed. Lewis v. Williams, 186 Miss. 701, 191 So. 479, 1939 Miss. LEXIS 256 (Miss. 1939).

Oral agreement of grantee to make reconveyance of land conveyed held within statute of frauds and unenforceable. Palmer v. Spencer, 161 Miss. 561, 137 So. 491, 1931 Miss. LEXIS 285 (Miss. 1931).

Parol agreement to reconvey land bid in at sale under deed of trust is within the statute. Campbell v. Bright, 87 Miss. 443, 40 So. 3, 1905 Miss. LEXIS 160 (Miss. 1905).

A promise to reconvey lands is within the statute, whether made before or after the conveyance to the promisor. Clearman v. Cotton, 66 Miss. 467, 6 So. 156, 1889 Miss. LEXIS 129 (Miss. 1889).

A contract by a judgment-creditor who has purchased the land of his debtor at execution-sale, that the latter may redeem the land by payment of the debt, is within the statute. Rutland v. Brister, 53 Miss. 683, 1876 Miss. LEXIS 133 (Miss. 1876).

31. —Boundary and party wall agreements.

Oral agreement, under which adjacent owners erected a two story building with party wall on ground floor and common hallway on second story, did not create an easement by grant. Binder v. Weinberg, 94 Miss. 817, 48 So. 1013, 1909 Miss. LEXIS 363 (Miss. 1909).

A parol agreement between coterminous owners, fixing an uncertain and disputed boundary between their lands, followed by possession, is valid and binding. Archer v. Helm, 69 Miss. 730, 11 So. 3, 1892 Miss. LEXIS 1 (Miss. 1892).

It is competent to establish boundaries by parol, yet the establishment of a boundary between two government survey subdivisions in conflict with the official survey cannot be by parol. It is within the statute. May v. Baskin, 20 Miss. 428, 1849 Miss. LEXIS 54 (Miss. 1849).

32. —Licenses.

An oral agreement allegedly granting one party an “irrevocable license” to construct and maintain a road across the lands of another is unenforceable by reason of the statute of frauds. Reid v. Horne, 187 So. 2d 316, 1966 Miss. LEXIS 1347 (Miss. 1966).

An oral grant of a license to cut and remove timber is not one of an interest in realty within the statute of frauds. Towles v. Hodges, 235 Miss. 258, 108 So. 2d 884, 1959 Miss. LEXIS 423 (Miss. 1959).

A verbal agreement to convey land to a county for school purposes, by which third parties are induced to erect a schoolhouse thereon, is an irrevocable license for the purpose for which it was made as long as the house is used for the purpose specified. Agnew v. Jones, 74 Miss. 347, 23 So. 25, 1896 Miss. LEXIS 186 (Miss. 1896).

The statute [Code 1942, § 264] does not prevent a defendant, sued in trespass, from showing a parol license. New Orleans, J. & G. N. R. Co. v. Moye, 39 Miss. 374, 1860 Miss. LEXIS 61 (Miss. 1860).

33. —Timber contracts.

Oral contract to supply timber to paper mill was contract for sale of timber not a brokerage contract and was therefore unenforceable due to lack of writing evidencing contract; agreement did not fall within any exceptions to UCC Statute of Frauds. Futch v. James River-Norwalk, Inc., 722 F. Supp. 1395, 1989 U.S. Dist. LEXIS 12113 (S.D. Miss.), aff'd, 887 F.2d 1085, 1989 U.S. App. LEXIS 15434 (5th Cir. Miss. 1989).

An oral contract for the sale of standing timber is unenforceable. Dobson v. Masonite Corp., 359 F.2d 921, 1966 U.S. App. LEXIS 6375 (5th Cir. Miss. 1966).

An agreement for services in cutting and clearing land of timber is not within the statute of frauds. Dobson v. Masonite Corp., 359 F.2d 921, 1966 U.S. App. LEXIS 6375 (5th Cir. Miss. 1966).

The question of whether an oral contract for clearing 9,200 acres of land of all oak trees whether dead, diseased, or merchantable, was an agreement for the sale of timber or one for the performance of personal services was a question of fact to be determined by the jury. Dobson v. Masonite Corp., 359 F.2d 921, 1966 U.S. App. LEXIS 6375 (5th Cir. Miss. 1966).

An oral grant of a license to cut and remove timber is not one of an interest in realty within the statute of frauds. Towles v. Hodges, 235 Miss. 258, 108 So. 2d 884, 1959 Miss. LEXIS 423 (Miss. 1959).

One who merely sells property to which he has no title is not liable for trespass committed by his vendee and therefore purchaser of standing timber under oral agreement was not liable for trespass in cutting the timber committed by person to whom purchaser sold the standing timber by oral agreement. Hudson v. Landers, 215 Miss. 447, 61 So. 2d 312, 1952 Miss. LEXIS 584 (Miss. 1952).

Oral contract for sale of growing timber is within statute of frauds and is merely license which authorizes entry upon land and cutting and removal of timber thereon, but license is revocable at will of seller. Rowan v. Rosenblatt, 206 Miss. 259, 39 So. 2d 873, 1949 Miss. LEXIS 259 (Miss. 1949).

Purchaser of growing timber under oral contract cannot recover damages for loss of profits for alleged breach of contract when owner of timber revokes oral agreement and sells land and uncut timber to another. Rowan v. Rosenblatt, 206 Miss. 259, 39 So. 2d 873, 1949 Miss. LEXIS 259 (Miss. 1949).

Written agreement, unenforceable as conveyance of standing timber, is sufficient to constitute valid license or permit for cutting and removal of timber and when timber is cut into logs for removal from lands, title to logs passes to purchaser, subject to right of seller to enforce lien for purchase money thereon. Dixie Pine Products Co. v. Breland, 205 Miss. 610, 39 So. 2d 265, 1949 Miss. LEXIS 450 (Miss. 1949).

Written agreement for sale of standing timber which does not describe land is unenforceable under statute of frauds after license, or permit, as evidenced by the writing, to cut and remove timber is revoked by seller. Dixie Pine Products Co. v. Breland, 205 Miss. 610, 39 So. 2d 265, 1949 Miss. LEXIS 450 (Miss. 1949).

Contract of sale of standing timber, which is unenforceable under statute of frauds, attaches to trees as chattels as fast as they are severed from realty, and purchaser is entitled to remove them as his own, and owner of land has no right to take the timber without due process of law. Dixie Pine Products Co. v. Breland, 205 Miss. 610, 39 So. 2d 265, 1949 Miss. LEXIS 450 (Miss. 1949).

Purchaser of standing timber who cuts timber before his license or permit for cutting is terminated by revocation or expiration by limitation of time is entitled to reasonable time in which to cut up timber felled and to remove it. Dixie Pine Products Co. v. Breland, 205 Miss. 610, 39 So. 2d 265, 1949 Miss. LEXIS 450 (Miss. 1949).

Contract for purchase of standing timber is within statute. Queen City Hoop Co. v. Barnett, 127 Miss. 66, 89 So. 819, 1921 Miss. LEXIS 208 (Miss. 1921).

But contract for the purchase of all timber on certain land to be cut into logs and delivered by seller at a certain place was not within statute requiring writing. Turner v. Planters' Lumber Co., 92 Miss. 767, 46 So. 399, 1908 Miss. LEXIS 232 (Miss. 1908).

A parol agreement authorizing the cutting of standing timber on lands is within the statute of frauds. A sale of growing timber by parol is a license and authorizes an entry upon the land, which is revocable at the will of the seller. Walton v. Lowrey, 74 Miss. 484, 21 So. 243, 1896 Miss. LEXIS 165 (Miss. 1896).

The term "land" embraces not only the soil, but its natural produce, growing upon and affixed to it; hence a sale of growing timber is within the statute. Harrell v. Miller, 35 Miss. 700, 1858 Miss. LEXIS 74 (Miss. 1858).

34. —Leases.

In suits involving alleged oral agreements assertedly made by agents for the renewal or extension of written leases, the burden of proof is on the person asserting such an agreement not only to establish agency, but he must establish the agent's authority as well. Stilley v. Illinois C. R. Co., 209 Miss. 414, 47 So. 2d 840, 1950 Miss. LEXIS 406 (Miss. 1950).

The date specified in a mineral lease, not the date of delivery or actual signing by the various owners, is the effective date of the lease. Hughes v. Franklin, 201 Miss. 215, 29 So. 2d 79, 1947 Miss. LEXIS 388 (Miss. 1947).

This section, and not 1930, § 2949, applies to contracts by an attorney in fact for the making of a lease. Hytken v. Bianca, 186 Miss. 323, 186 So. 624, 188 So. 311, 1939 Miss. LEXIS 199 (Miss. 1939).

Under this section [Code 1942, § 264] a lease, if otherwise void, is valid in equity as a contract to make a lease, where the agent's appointment is in writing. Hytken v. Bianca, 186 Miss. 323, 186 So. 624, 188 So. 311, 1939 Miss. LEXIS 199 (Miss. 1939).

The court is without the power to engraft upon the statute an exception which would exclude from its provisions an oral lease for three years because of money expended on the leased premises by the lessee upon reliance of the oral promise of the lessor. Tanner v. Walsh, 184 Miss. 147, 183 So. 278, 1938 Miss. LEXIS 304 (Miss. 1938).

Where written ten-year lease gave lessee option of renewal for additional five years on same terms, was assigned and lessee's assignee remained in possession after expiration of original term, exclusion of lease and assignment from evidence in action for rent by lessor's successor in interest held error, since original parties to lease did not contemplate execution of new lease as necessary for renewal, and therefore original lease included the renewal term as covenant running with the land and satisfied statute of frauds after oral renewal. Economy Stores, Inc. v. Moran, 178 Miss. 62, 172 So. 865, 1937 Miss. LEXIS 202 (Miss. 1937).

Tenant, entering under contract unenforceable under statute of frauds, held to become a tenant from year to year. Montgomery v. Hollingsworth, 127 Miss. 346, 90 So. 79, 1921 Miss. LEXIS 235 (Miss. 1921).

Appointment of agent executing lease for more than one year must be by deed. Hutchinson v. Platt, 119 Miss. 606, 81 So. 281, 1919 Miss. LEXIS 38 (Miss. 1919).

Surrender of lease and possession by landlord rendered lease having more than year to run a completed, executed contract, unaffected by statute of frauds. Bradbury v. McLendon, 119 Miss. 210, 80 So. 633, 1918 Miss. LEXIS 28 (Miss. 1918).

Mortgagee taking for value without notice held not chargeable with unrecorded assignment of lease. Corinth Bank & Trust Co. v. Wallace, 111 Miss. 62, 71 So. 266, 1916 Miss. LEXIS 241 (Miss. 1916).

Tenant holding under five-year oral agreement was tenant from year to year. Scruggs v. McGehee, 110 Miss. 10, 69 So. 1003, 1915 Miss. LEXIS 18 (Miss. 1915).

One who has verbally leased lands for three years, who intends to enter and cultivate the same, may, before actual entry, execute a valid deed of trust or mortgage upon the crops to be grown during the coming year. Grisham v. Lutric, 76 Miss. 444, 24 So. 169, 1898 Miss. LEXIS 73 (Miss. 1898).

The clause relating to leases has reference to the duration of the term, and not to the time of its commencement. A verbal lease for a term not more than a year is good, even if the term is to begin in the future. McCroy v. Toney, 66 Miss. 233, 5 So. 392, 1888 Miss. LEXIS 95 (Miss. 1888).

A verbal lease of land "for the crop season of 1880," which might or might not be for more than one year, is not within the statute. John Chaffe & Sons v. Benoit, 60 Miss. 34, 1882 Miss. LEXIS 5 (Miss. 1882).

35. —Contract of employment of agent.

A contract to sell the land of another for a commission is not required to be in writing. Lowe v. Hodges, 726 So. 2d 1289, 1998 Miss. App. LEXIS 1108 (Miss. Ct. App. 1998).

Authority from owner of land in favor of another to sell the same is not required to be in writing, and the expiration date thereof may later be waived by parol or by conduct of the parties. Partee v. Pepple, 197 Miss. 486, 20 So. 2d 73, 1944 Miss. LEXIS 314 (Miss. 1944), but see Mitchell

v. Rawls, 493 So. 2d 361, 1986 Miss. LEXIS 2587 (Miss. 1986).

Under this section [Code 1942, § 264] a lease, if otherwise void, is valid in equity as a contract to make a lease, where the agent's appointment is in writing. Hytken v. Bianca, 186 Miss. 323, 186 So. 624, 188 So. 311, 1939 Miss. LEXIS 199 (Miss. 1939).

However, the appointment of agent executing lease for more than year, must be by deed. Hutchinson v. Platt, 119 Miss. 606, 81 So. 281, 1919 Miss. LEXIS 38 (Miss. 1919).

The statute does not affect an agent's right to compensation for selling land pursuant to oral instructions. Cook v. Smith, 119 Miss. 375, 80 So. 777, 1919 Miss. LEXIS 6 (Miss. 1919); Hancock v. Dodge, 85 Miss. 228, 37 So. 711, 1904 Miss. LEXIS 121 (Miss. 1904).

A contract that complainant is to find a purchaser for defendant's land and receive therefor a part of the proceeds of the sale is not a contract for the sale of land, and therefore need not be in writing. Lesley v. Rosson, 39 Miss. 368, 1860 Miss. LEXIS 60 (Miss. 1860).

36. Contract not to be performed within fifteen months, generally.

Appellate court affirmed the grant of summary judgment in favor of defendant because the alleged contract between plaintiff and defendant violated the statute of frauds in Miss. Code Ann. § 15-3-1(c) and (d), as it was not in writing, it dealt with the leasing of real estate, and the term of the contract extended for more than 15 months. Glinsey v. Newson, 911 So. 2d 661, 2005 Miss. App. LEXIS 651 (Miss. Ct. App. 2005).

Oral agreement not performable within statutory period is not taken out of the statute by providing that it may be terminated by either party within such period. Stahlman v. National Lead Co., 318 F.2d 388, 1963 U.S. App. LEXIS 5265 (5th Cir. Miss. 1963).

Possibility of performance within 15 months takes an oral contract out of the statute. Morgan v. Jackson Ready-Mix Concrete, 247 Miss. 863, 157 So. 2d 772, 1963 Miss. LEXIS 365 (Miss. 1963).

To bring a particular contract within the statute there must be a negation of the right to perform it within 15 months. United States Finance Co. v. Barber, 247 Miss. 800, 157 So. 2d 394, 1963 Miss. LEXIS 358 (Miss. 1963).

An oral agreement to be performed within the statutory period is not within the statute of frauds although it is a modification of an earlier agreement. Flowood Corp. v. Chain, 247 Miss. 434, 152 So. 2d 915, 1963 Miss. LEXIS 314 (Miss. 1963).

Where the time for performance is not fixed, the contract will not be presumed to be within the statute. Duff v. Snider, 54 Miss. 245, 1876 Miss. LEXIS 26 (Miss. 1876).

37. —Employment.

An oral contract of employment which extends for more than 15 months is subject to the statute of frauds and thus unenforceable. Floyd v. Segars, 572 F.2d 1018, 1978 U.S. App. LEXIS 11278 (5th Cir. Miss. 1978).

Contracts of present employment and of indefinite duration are not within this provision, being terminable at any time and therefore susceptible of performance within 15 months. United States Finance Co. v. Barber, 247 Miss. 800, 157 So. 2d 394, 1963 Miss. LEXIS 358 (Miss. 1963).

Where complaint alleged that shortly prior to specified date complainant entered into an oral contract of employment as manager of manufacturing plant from one year from date thus specified with provision for employment from year to year thereafter using the words shortly prior as meaning more than three months. Greer v. Crawford Corp., 220 Miss. 97, 70 So. 2d 69, 1954 Miss. LEXIS 413 (Miss. 1954).

In action for the amount due under oral contract of employment for one year, trial court erred in overruling motion to require specific allegations in complaint as to when and where the alleged contract was consummated, in view of the fact that such information was necessary to determine whether the Alabama statute of frauds, under which the contract could not have been performed within the required time, or the Mississippi statute was applicable. Edmondson v. Edmondson, 209 Miss. 596, 48 So. 2d 121, 1950 Miss. LEXIS 418 (Miss. 1950).

Verbal contract of employment to begin in future and continue for year is void. Gulfport Cotton Oil, Fertilizer & Mfg. Co. v. Reneau, 94 Miss. 904, 48 So. 292, 1909 Miss. LEXIS 346 (Miss. 1909).

38. —Sales.

But oral exclusive sales agency contract for no specific period, but considered as permanent so long as buyer paid for goods, was held invalid. Gerachi v. Sherwin-Williams Co., 156 Miss. 36, 125 So. 410, 1930 Miss. LEXIS 131 (Miss. 1930).

An oral agreement to buy goods from a person exclusively for five years if he sell as reasonably as others, is within the statute. Mallett v. Lewis, 61 Miss. 105, 1883 Miss. LEXIS 80 (Miss. 1883).

39. —Miscellaneous.

A bankruptcy debtor's pre-petition payment to law firms, and their retention of retainers without further action, created valid security interest in favor of law firms; perfection of security interest was achieved by law firms' continuous possession of debtor's funds, subject to the status of frauds and amounts of compensation actually allowed by court. In re Viscount Furniture Corp., 133 B.R. 360, 1991 Bankr. LEXIS 1630 (Bankr. N.D. Miss. 1991).

An action on an oral agreement to purchase a saw mill's entire output of railroad crossties, evidenced only by a promissory note, was properly barred by the statute of frauds where the promissory note did not contain the substantial terms of the contract and where the contract was intended to last for as long as the sawmill was in business. Roberts v. Southern Wood Piedmont Co., 571 F.2d 276, 1978 U.S. App. LEXIS 11689 (5th Cir. Miss. 1978).

The statute of frauds did not operate to preclude a suit on a corporate merger agreement, merely because a contemplated oral employment contract was never committed to writing, where the plaintiff did not attempt to enforce the employment contract, but only the basic merger agreement itself, and where the contemplated employment arrangement was merely a condition precedent to closing, and a collateral matter separate and apart from, the binding bilateral merger agreement. Mid-Continent Tel. Corp. v. Home Tel. Co., 319 F. Supp. 1176, 1970 U.S. Dist. LEXIS 10081 (N.D. Miss. 1970).

An oral agreement between two parties to acquire jointly the corporate stock owned by another as soon as possible, or whenever the shares could be obtained, was a contract possible of performance within 15 months and did not violate this section. Jones v. McGahey, 187 So. 2d 579, 1966 Miss. LEXIS 1352 (Miss. 1966).

Oral dealership agreement, capable of performance within 15 months, is not within the statute of frauds though parties contemplated possible duration for an indefinite period. Hazell Machine Co. v. Shahan, 249 Miss. 301, 161 So. 2d 618, 1964 Miss. LEXIS 392 (Miss. 1964).

Oral agreement that one party shall have a permanent right to distribute the other's products is one not performable within 15 months, and hence unenforceable. Stahlman v. National Lead Co., 318 F.2d 388, 1963 U.S. App. LEXIS 5265 (5th Cir. Miss. 1963).

Where testator executes will in compliance with oral agreement with the devisee that the latter will render unique and necessary personal services to testator involving a substantial change in the status and manner of living of the promisee, and such services have been performed, so that a revocation of the will amounts to fraud upon the devisee rendering it impossible or impracticable to restore devisee to prior situation, equity will hold such will to be irrevocable and the rights thereunder may be established. Johnston v. Tomme, 199 Miss. 337, 24 So. 2d 730, 1946 Miss. LEXIS 202 (Miss. 1946).

Suit based on oral agreement in 1929 that, until terminated by either party, insurer would renew fire policy yearly, under which policy was renewed for 1930 and 1931 but not 1932, held within statute of frauds barring action on agreement not to be performed within fifteen months. Fireman's Fund Ins. Co. v. Williams, 170 Miss. 199, 154 So. 545, 1934 Miss. LEXIS 124 (Miss. 1934).

Oral agreement to keep fire insurance policy in force and renew policy three years from date of agreement was within statute of frauds. Green v. Hartford Fire Ins. Co., 157 Miss. 316, 128 So. 107, 1930 Miss. LEXIS 299 (Miss. 1930).

One cannot be held chargeable to physicians for services to another plantation owner's tenants not rendered within year of making oral contract. Hannah v. Covington, 155 Miss. 825, 125 So. 418, 1930 Miss. LEXIS 125 (Miss. 1930).

Appointment of agent executing lease for more than one year must be by deed. Hutchinson v. Platt, 119 Miss. 606, 81 So. 281, 1919 Miss. LEXIS 38 (Miss. 1919).

40. —Possibility of performance within fifteen months.

In an action arising out of an oral agreement between cotton merchants to enter into a joint venture with no definite date for its termination, the action was not barred by the statute of limitations where the last transaction of the venture took place on July 24, 1970, and the action was commenced sometime prior to December 12, 1972; nor was the action barred by § 15-3-1 where the oral agreement had been of an indefinite duration and susceptible of performance within 15 months and where the agreement had been substantially performed by both parties. Beane v. Bowden, 399 So. 2d 1358, 1981 Miss. LEXIS 2030 (Miss. 1981).

An oral contract for the cutting and hauling of pulp wood to the railroad and loading the same on cars for shipment to the defendant with a guarantee to the plaintiff of employment under the contract for a period of not less than two years, whether regarded as a contract for employment or a contract for the purchase of pulp wood, could not be performed within a space of fifteen months from the making thereof and the contract is unenforceable under this section [Code 1942, § 264]. Poole v. Johns-Manville Products Corp., 210 Miss. 528, 49 So. 2d 891, 1951 Miss. LEXIS 291 (Miss. 1951).

A promise to wash, iron and cook for another in return for a promise of a devise of property may be performed in less than fifteen months and, therefore, is not within the statute. Boggan v. Scruggs, 200 Miss. 747, 29 So. 2d 86, 1947 Miss. LEXIS 358 (Miss. 1947), overruled, Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

But oral contract for personal services not performable within fifteen months is unenforceable. Moore v. Smart, 171 Miss. 248, 157 So. 467, 1934 Miss. LEXIS 237 (Miss. 1934).

Where oral contract is unenforceable under statute of frauds, parties thereto may thereafter enter into new oral contract identical in terms with former, but recognition of former contract does not result in formation of new contract unless parties intended thereby to enter into new contract. Moore v. Smart, 171 Miss. 248, 157 So. 467, 1934 Miss. LEXIS 237 (Miss. 1934).

Where oral contract for personal services was unenforceable because not performable within fifteen months, evidence that in subsequent conversation employer declined to put contract in writing, but stated what he had thereunder agreed to pay and that he would comply therewith, held not to show formation of new contract which would be enforceable. Moore v. Smart, 171 Miss. 248, 157 So. 467, 1934 Miss. LEXIS 237 (Miss. 1934).

A contract which may or may not be performed in one year is not within the statute. Steen v. Kirkpatrick, 84 Miss. 63, 36 So. 140, 1904 Miss. LEXIS 8 (Miss. 1904).

A contract by a railroad company to give a designated person employment for the life of such person is not within the statute, since it may be fully performed within a year. Jackson v. Illinois C. R. Co., 76 Miss. 607, 24 So. 874, 1898 Miss. LEXIS 106 (Miss. 1898).

A contract of employment which is possible to be performed within the space of one year from the making thereof is not within the statute. A. B. Smith Co. v. Jones, 75 Miss. 325, 22 So. 802, 1897 Miss. LEXIS 108 (Miss. 1897).

41. Settlement agreements.

To hold that a settlement agreement dictated into the record in the presence of a presiding judge 'but which required the execution of a deed to real estate' is not enforceable would undermine the inherent power of the court to enforce settlement agreements reached in the presence of the court. Nothing in the statute of frauds requires such a holding. Scarbrough v. Long, 112 F. Supp. 2d 609, 2000 U.S. Dist. LEXIS 13416 (S.D. Miss. 2000).

RESEARCH REFERENCES

ALR.

Oral agreement restricting use of real property as within statute of frauds. 5 A.L.R.2d 1316.

Performance as taking contract not to be performed within a year out of the statute of frauds. 6 A.L.R.2d 1053.

Sale or contract for sale of standing timber as within provisions of statute of frauds respecting sale or contract of sale of real property. 7 A.L.R.2d 517.

Statutory necessity and sufficiency of written statement as to amount of compensation in broker's contract to procure purchase, sale, or exchange of real estate. 9 A.L.R.2d 747.

Undelivered lease or contract (other than for sale of land), or undelivered memorandum thereof, as satisfying statute of frauds. 12 A.L.R.2d 508.

Failure to object to parol evidence, or voluntary introduction thereof, as waiver of defense of statute of frauds. 15 A.L.R.2d 1330.

Sufficiency of memorandum of lease agreement to satisfy the statute of frauds, as regards terms and conditions of lease. 16 A.L.R.2d 621.

Question, as one of law for court or of fact for jury, whether oral promise was an original one or was a collateral promise to answer for the debt, default, or miscarriage of another. 20 A.L.R.2d 246.

Sufficiency of description or designation of land in contract or memorandum of sale, under statute of frauds. 23 A.L.R.2d 6.

Necessity and sufficiency of statement of consideration in contract or memorandum of sale of land, under statute of frauds. 23 A.L.R.2d 164.

Construction and effect of exception making statute of frauds provision inapplicable where goods are manufactured by seller for buyer. 25 A.L.R.2d 672.

Rights as between vendor and vendee under land contract in respect of interest. 25 A.L.R.2d 951.

Rights of parties under oral agreement to buy or bid in land for another. 27 A.L.R.2d 1285.

Oral contract for personal services so long as employee is able to continue in work, to do satisfactory work, or the like, as within statute of frauds relating to contracts not to be performed within a year. 28 A.L.R.2d 878.

Oral acceptance of written offer by party sought to be charged as satisfying statute of frauds. 30 A.L.R.2d 972.

What constitutes part performance sufficient to take agreement in consideration of marriage out of statute of frauds. 30 A.L.R.2d 1419.

Effect of attempted cancelation or erasure in memorandum otherwise sufficient to satisfy statute of frauds. 31 A.L.R.2d 1112.

Statute of frauds: promise by stockholder, officer, or director to pay debt of corporation. 35 A.L.R.2d 906.

Sufficiency, under the statute of frauds, of description or designation of land in contract or memorandum of sale which gives right to select the tract to be conveyed. 46 A.L.R.2d 894.

What constitutes promise made in or upon consideration of marriage within statute of frauds. 75 A.L.R.2d 633.

Oral surrender of written lease. 78 A.L.R.2d 933.

Doctrine of part performance with respect to renewal option in lease not complying with statutes of frauds. 80 A.L.R.2d 425.

Admissibility of parol evidence to connect signed and unsigned documents relied upon as memorandum to satisfy statute of frauds. 81 A.L.R.2d 991.

Price fixed in contract violating statute of frauds as evidence of value in action on quantum meruit. 21 A.L.R.3d 9.

Statute of frauds: validity of lease or sublease subscribed by one of the parties only. 46 A.L.R.3d 619.

Comment Note.–Statute of frauds and conflict of laws. 47 A.L.R.3d 137.

Action by employee in reliance on employment contract which violates statute of frauds as rendering contract enforceable. 54 A.L.R.3d 715.

Promissory estoppel as basis for avoidance of statute of frauds. 56 A.L.R.3d 1037.

Exceptions to rule that oral gifts of land are unenforceable under statute of frauds. 83 A.L.R.3d 1294.

Liability for interference with invalid or unenforceable contract. 96 A.L.R.3d 1294.

Check given in land transaction as sufficient writing to satisfy statute of frauds. 9 A.L.R.4th 1009.

Promise by one other than principal to indemnify one agreeing to become surety or guarantor as within statute of frauds. 13 A.L.R.4th 1153.

Promissory estoppel as basis for avoidance of UCC statute of frauds (UCC § 2-201). 29 A.L.R.4th 1006.

Antenuptial contracts: parties' behavior during marriage as abandonment estoppel, or waiver regarding contractual rights. 56 A.L.R.4th 998.

Sufficiency of showing, in establishing boundary by parol agreement, that boundary was uncertain or in dispute before agreement. 72 A.L.R.4th 132.

Applicability of statute of frauds to promise to pay for legal services furnished to another. 84 A.L.R.4th 994.

Satisfaction of statute of frauds by e-mail. 110 A.L.R.5th 277.

Sufficiency of description of terms and conditions of lease, or lease provision, so as to comply with statute of frauds. 12 A.L.R.6th 123.

Am. Jur.

72 Am. Jur. 2d, Statute of Frauds §§ 4 et seq.

23 Am. Jur. Pl & Pr Forms (Rev), Statute of Frauds, Forms 11 et seq. (answer that agreement not in writing).

19 Am. Jur. Pl & Pr Forms, Statute of Frauds, Forms 19:8 et seq. (answer that agreement not in writing).

1 Am. Jur. Proof of Facts 2d, Part Performance of Oral Land Contract, §§ 8 et seq. (proof of possession by purchaser); §§ 17 et seq. (proof of improvements made by purchaser); §§ 26 et seq. (proof of payment by purchaser of consideration and of property taxes).

38 Am. Jur. Proof of Facts 2d 91, Fraudulent Misrepresentation as to Use to Which Real Property Could be Put.

CJS.

37 C.J.S., Frauds, Statute of §§ 3-31, 33-116, 117-160.

Law Reviews.

1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

Williamson and Redfern, Lender liability in Mississippi: Part II loan commitments and agreements. 59 Miss. L. J. 71, Spring, 1989.

§ 15-3-3. Repealed.

Repealed by Laws of 2006, ch. 371, § 13, effective from and after July 1, 2006.

[Codes, Hutchinson's 1848, ch. 47, art. 1 (2); 1857, ch. 44, art. 2; 1871, § 2893; 1880, § 1293; 1892, §§ 4226, 4227; 1906, §§ 4776, 4777; Hemingway's 1917, §§ 3120, 3121; 1930, §§ 3344, 3345; 1942, §§ 265, 266.]

Editor's Notes — Former § 15-3-3 was entitled: "Fraudulent conveyances, judgments, loans and the like." For present similar provisions, see the Uniform Fraudulent Transfer Act, §§ 15-3-101 et seq.

§ 15-3-5. Fraudulent conveyances, judgments, loans and the like; exceptions.

Section 15-3-3 shall not extend to any estate or interest in any lands, goods or chattels, or any rents, common, or profit out of the same, which shall be upon good consideration and bona fide lawfully conveyed or assured to any person or persons, bodies-politic or corporate, nor shall it in any case extend to creditors whose debts were contracted after such fraudulent act, unless made with intent to defraud them, and though a conveyance or contract be decreed void as to prior creditors, it shall not, on that account, be void as to subsequent creditors or purchasers.

HISTORY: Codes, Hutchinson's 1848, ch. 47, art. 1 (3); 1857, ch. 44, art. 3; 1871, § 2894; 1880, § 1294; 1892, § 4228; 1906, § 4778; Hemingway's 1917, § 3122; 1930, § 3346; 1942, § 267.

Editor's Notes — Section 15-3-3, referred to in the section, was repealed by Laws of 2006, ch. 371, § 13, effective from and after July 1, 2006.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Husband and wife.
3. Mortgages and deeds of trust.

1. In general.

Transfer not fraudulent under statute where conveyance was to satisfy antecedent debts and advancements; to induce wife to put up money for husband's bail and lawyer in murder case; [to settle property rights related to divorce,] where wife had filed for divorce earlier with property settlement unresolved, and as result of signing over property this removed any such issue from dispute concerning divorce, it having been held that transfer of money or property in good faith between husband and wife as settlement of property rights and in lieu of alimony in contemplation of divorce proceedings is not without sufficient consideration where divorce is subsequently obtained. Barbee v. Pigott, 507 So. 2d 77, 1987 Miss. LEXIS 2475 (Miss. 1987).

When immediate family member is preferred as creditor, clear and satisfactory proof of valid and subsisting debt which would be enforced and payment exacted regardless of fortune or misfortune of debtor must be shown. Barbee v. Pigott, 507 So. 2d 77, 1987 Miss. LEXIS 2475 (Miss. 1987).

Fraudulent conveyance with sole purpose of cheating creditors is void as to such creditors whether supported by consideration or not. Barbee v. Pigott, 507 So. 2d 77, 1987 Miss. LEXIS 2475 (Miss. 1987).

If a bank withholds deed to it from record by agreement with its president, the grantor, to give him a fictitious credit, it is fraudulent in fact as against the president's creditors who became such without notice of the deed, and the bank's claim thereunder will be postponed to the rights of such creditors. Robertson & Co. v. Columbus Ins. & Banking Co., 85 Miss. 234, 38 So. 100 (Miss. 1904).

It has been held that this section [Code 1942, § 267] applies only to Code 1942, § 265 being inconsistent with Code 1942, § 266. Jennings v. Wilson, 71 Miss. 42, 14 So. 259, 1893 Miss. LEXIS 159 (Miss. 1893).

The change of the form of the debt, or the renewal of its evidence, does not make a prior creditor a subsequent one. Thomson v. Hester, 55 Miss. 656, 1878 Miss. LEXIS 28 (Miss. 1878); Cook v. Ligon, 54 Miss. 652, 1877 Miss. LEXIS 70 (Miss. 1877).

Under this statute [Code 1942, § 267] a subsequent purchaser cannot set aside a conveyance made to defraud existing creditors only. Prestidge v. Cooper, 54 Miss. 74, 1876 Miss. LEXIS 13 (Miss. 1876).

And a subsequent creditor must show that the deed was intended to defraud him. Hilliard v. Cagle, 46 Miss. 309, 1872 Miss. LEXIS 7 (Miss. 1872).

A conveyance to secure a pre-existing debt does not make the person so secured a bona fide purchaser under the section [Code 1942, § 267]. Pope v. Pope, 40 Miss. 516, 1866 Miss. LEXIS 91 (Miss. 1866).

2. Husband and wife.

A trial court properly dismissed a former wife's fraudulent conveyance claim against her former husband, based upon the former husband's conveyance of 15.2 acres of farm property to his father for inadequate consideration, where the husband had tendered the amount of the child support judgment owed to the former wife. However, since the matter was to be remanded for a determination of an additional amount of child support owed by the former husband, the judgments would be vacated to the extent necessary to provide the lower court with the opportunity to consider the need for security with regard to the child support arrearage or any of the father's further obligations to and for the benefit of his children. McPhail v. McPhail, 564 So. 2d 839, 1990 Miss. LEXIS 163 (Miss. 1990).

Debtor has right to prefer one creditor over another, even if creditor is wife, and conveyance to satisfy pre-existing debt which equals value of property conveyed is valid over claim of other creditors. Barbee v. Pigott, 507 So. 2d 77, 1987 Miss. LEXIS 2475 (Miss. 1987).

Conveyance was not fraudulent where, when deed was executed, husband and wife did not have close family relationship, but were instead hostile and adverse, and wife was creditor trying to protect interest; while joint tenant or tenant in common could violate fraudulent conveyance statute in conveyance to remaining owner, this was not classic case of harried debtor transferring all of this property to third party, but was case where husband transferred his interest in their property to wife. Barbee v. Pigott, 507 So. 2d 77, 1987 Miss. LEXIS 2475 (Miss. 1987).

Deeds which were executed without consideration were not fraudulent conveyances within the meaning of § 15-3-5, where they were executed before the date on which debtor-creditor relationships arose, and where they were clearly not executed with the intent to defraud the creditors in question. Morgan v. Sauls, 413 So. 2d 370, 1982 Miss. LEXIS 1881 (Miss. 1982).

Where a husband conveyed real estate to his father, to whom he was indebted, allegedly for the purpose of placing the property beyond the ordinary process of the court, and for the purpose of withholding from the wife and her two minor children the property rights therein under the law, and the deed was executed only a few days before, and not recorded until a few days after, wife filed a bill for divorce and maintenance, the chancellor could set aside the conveyance without incorporating in the decree a specific finding that the value of the property conveyed was substantially in excess of the amount of the indebtedness actually owing by the grantor to the grantee. Blount v. Blount, 231 Miss. 398, 95 So. 2d 545, 96 So. 2d 232, 97 So. 2d 240, 1957 Miss. LEXIS 525, 1957 Miss. LEXIS 526, 1957 Miss. LEXIS 527 (Miss. 1957).

A transfer by a husband to his wife, with intent to defraud existing creditors, is valid as to a subsequent creditor of the husband who had knowledge of the transaction and consented thereto, and dealt with the wife as the real owner for several years before the debt with the husband was contracted. Donoghue v. Shull, 85 Miss. 404, 37 So. 817, 1904 Miss. LEXIS 155 (Miss. 1904).

3. Mortgages and deeds of trust.

Oral agreement of second mortgagee that if mortgagor would pay part of indebtedness secured by first trust deed, and if third party would advance remainder of indebtedness to prevent foreclosure of first trust deed, third party should have first lien on land covered, held valid and binding. Taylor v. Phillips, 182 Miss. 539, 181 So. 855, 1938 Miss. LEXIS 192 (Miss. 1938).

Deed of trust on firm property to secure existing indebtedness and indebtedness that may accrue in the future, held mere security and valid. Lawrence Lumber Co. v. A. J. Lyon & Co., 93 Miss. 859, 47 So. 849, 1908 Miss. LEXIS 161 (Miss. 1908).

Deed of trust to wife to secure a valid debt while grantor was financially embarrassed and indebted to others, held not fraud on other creditors. Godfrey Frank & Co. v. Doughty, 47 So. 643 (Miss. 1908).

RESEARCH REFERENCES

ALR.

Assumption of mortgage as consideration for conveyance attacked as in fraud of creditors. 6 A.L.R.2d 270.

Transaction in consideration of discharge of antecedent debt owed by one other than grantor as based on "fair consideration" under Uniform Fraudulent Conveyance Act. 30 A.L.R.2d 1209.

Conveyance as fraudulent where made in contemplation of possible liability for future tort. 38 A.L.R.3d 597.

Am. Jur.

38 Am. Jur. Proof of Facts 2d 91, Fraudulent Misrepresentation as to Use to Which Real Property Could be Put.

39 Am. Jur. Proof of Facts 2d 733, Gift Rather Than Loan.

§ 15-3-7. Property of improperly disclosed principal or partner to be treated as property of one ostensibly transacting business.

If a person shall transact business as a trader or otherwise, with the addition of the words "agent," "factor," "and company," or "& Co.," or like words, and fail to disclose the name of his principal or partner by a sign in letters easy to be read, placed conspicuously at the house where such business is transacted, or if a person shall transact business in his own name without any such addition, all the property, stock, money and choses in action used or acquired in such business shall, as to the creditors of such person, be liable for his debts, and be in all respects treated in favor of his creditors as his property. However, the provisions of this section shall not apply to a refrigerated box, vending machine or other container when placed by a person, firm, or corporation in a store, mercantile establishment, or other place of business to be used therein, where said refrigerated box, vending machine, or other container is plainly marked with a sign, painted on or attached to and prominently displayed on such property, showing said property to be the property of the person, firm, or corporation, placing the same therein.

HISTORY: Codes, 1880, § 1300; 1892, § 4234; 1906, § 4784; Hemingway's 1917, § 3128; 1930, § 3352; 1942, § 273; Laws, 1956, ch. 208.

Cross References — Use of words "bank", "banking", "bankers", "trust company", etc., see § 81-3-3.

JUDICIAL DECISIONS

ANALYSIS

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1. In general.

Trustee of debtor corporation held title to all equipment in debtor's store premises, free and clear of any interest claimed therein by debtor's incorporators, who had never conveyed the equipment to the corporation, where incorporators failed to comply with statute by posting a sign on debtor's premises indicating such ownership, and there was nothing on record in Mississippi Secretary of State's office or chancery clerk's office showing such claim to ownership. In re Elvis Presley Heights Supermarket, Inc., 13 B.R. 956, 1981 Bankr. LEXIS 2991 (Bankr. N.D. Miss. 1981).

The Business Sign Statute (§ 15-3-7) does not violate the Due Process Clause of the Fourteenth Amendment and was not repealed by implication in § 75-10-103, but was virtually continued by express direction in § 75-2-326(3)(a); furniture and office equipment "used or acquired" in the business was subject to execution and sale under the statute. In re Bruneau's, Inc., 642 F.2d 146, 1981 U.S. App. LEXIS 14441 (5th Cir. Miss. 1981).

This section [Code 1942, § 273] does not apply where the contract creating the lien is recorded prior to the attachment by the creditors. National Cash Register Co. v. Thompson, 210 Miss. 37, 48 So. 2d 608, 1950 Miss. LEXIS 318 (Miss. 1950).

This section [Code 1942, § 273] fixes the ownership in the property, but takes no part in a contest between creditors of the common debtor who used or acquired the property which is the subject of the contest. National Cash Register Co. v. Thompson, 210 Miss. 37, 48 So. 2d 608, 1950 Miss. LEXIS 318 (Miss. 1950).

Accordingly, purchase money liens on automobile trailers which were seized and removed from leased premises of the purchaser by landlord under attachment writ seeking to collect unpaid rent were not displaced by landlord's lien and were not affected by the fact that there was no sign on the trailers indicating that the seller had any lien thereon. Dorsey v. Latham, 194 Miss. 253, 11 So. 2d 897, 1943 Miss. LEXIS 46 (Miss. 1943).

The state tax collector could not attach the truck of one engaged in the restaurant and cattle business but which was owned by another under an unrecorded conditional sales contract, to subject it to the payment of penalties for violation of the intoxicating liquor laws, since this section [Code 1942, § 273] applied only to contract debts and was not intended to cover such an obligation as that incurred under the intoxicating liquor statute. General Motor Acceptance Corp. v. Gully, 194 So. 473 (Miss. 1940); International Harvester Co. v. Gully, 188 Miss. 115, 194 So. 472, 1940 Miss. LEXIS 21 (Miss. 1940).

The forfeiture provided by the intoxicating liquor statute (Code 1942, § 2639) is not within the purview of this section [Code 1942, § 273], although in a broad sense it might be a debt constituting the state, county and municipality creditors, since this section was intended to cover only contract debts and has nothing to do with fines and forfeitures for violation of the criminal laws of the state. International Harvester Co. v. Gully, 188 Miss. 115, 194 So. 472, 1940 Miss. LEXIS 21 (Miss. 1940).

Statute providing that all property used or acquired in business transacted by person without disclosure of principal shall be liable for debts of such person held not to prevent such person from selling or pledging property used and acquired by him in his business; hence only right pledgor's general creditors have in pledge is to subject interest of pledgor to payment of debts. Wood Preserving Corp. v. Coney Grocery Co., 176 Miss. 406, 168 So. 864, 1936 Miss. LEXIS 133 (Miss. 1936).

Under this statute [Code 1942, § 273] a merchant's agreement to return goods to the manufacturer when requested is inoperative as to the merchant's creditors, and as to his trustee in bankruptcy who is entitled to all the rights and remedies of a creditor who has a lien by attachment or otherwise. In re Matheny, 57 F.2d 330, 1932 U.S. Dist. LEXIS 1121 (D. Miss. 1932).

When property was shipped into Mississippi, placed on sale in the store of a purchaser doing business as a trader under a sign, and there permitted to remain in his undisturbed possession as his property until the date of filing of a petition in bankruptcy, the lien or privilege for the purchase money given to the seller by a Louisiana statute was lost, and the vendor cannot prevail as against the trustee in bankruptcy vested with all the rights, remedies, and powers of creditors holding a lien thereof by equitable proceedings. In re Smith, 51 F.2d 290, 1931 U.S. Dist. LEXIS 1488 (D. Miss. 1931).

Automobile conditionally delivered to dealer and used in dealer's business must be treated as dealer's property, as against creditors. Durant Motor Co. v. Simpson, 160 Miss. 313, 133 So. 672, 1931 Miss. LEXIS 170 (Miss. 1931).

Notwithstanding Louisiana statute giving purchase-money lien, Louisiana seller held not entitled to priority where merchandise was sold to Mississippi buyer who had undisturbed possession thereof until buyer's bankruptcy petition. In re Caver, Caver & Co., 42 F.2d 293, 1930 U.S. Dist. LEXIS 1149 (D. Miss. 1930).

This statute [Code 1942, § 273] does not invalidate the conditional sales contract as between the parties, and therefore a vendor may not be allowed upon the purchaser's bankruptcy to waive the benefit of a conditional sales contract and obtain priority over other creditors by claiming a vendor's lien. In re Whatley, 30 F.2d 979, 1929 U.S. Dist. LEXIS 1886 (D. Miss. 1929).

Business Sign Statute does not derange priority of lien between creditors of common debtor. Campbell Paint & Varnish Co. v. Hall, 131 Miss. 671, 95 So. 641, 1923 Miss. LEXIS 213 (Miss. 1923); Crump v. Hill, 105 F.2d 124, 1939 U.S. App. LEXIS 3267 (5th Cir. Miss. 1939); Dodds v. Pratt, 64 Miss. 123, 8 So. 167, 1886 Miss. LEXIS 27 (Miss. 1886).

The section [Code 1942, § 273] has no application in a contest between creditors of the common debtor. Kinney v. Paine, 68 Miss. 258, 8 So. 747, 1890 Miss. LEXIS 69 (Miss. 1890).

Where a person undertook to form a stock company, but failed to do so, and carried on the business individually, without any sign indicating the company, the property used by him in the prosecution of such business is not liable to a judgment recovered against the fictitious company. Adams v. Berg, 65 Miss. 3, 3 So. 465, 1887 Miss. LEXIS 2 (Miss. 1887).

The section [Code 1942, § 273] does not apply in favor of the creditors of the trader so as to prevent a rescission of the sale and recovery of the goods by one induced to sell the same to such trader under his fraudulent representations. Frank v. Robinson, 65 Miss. 162, 3 So. 253, 1887 Miss. LEXIS 28 (Miss. 1887).

Where property is placed in the custody of a trader, to be sold by him as part of his stock, or under such circumstances as to appear to be his, and furnish him a basis of credit, it is within the section [Code 1942, § 273]. Shannon v. J. C. Blum & Co., 60 Miss. 828, 1883 Miss. LEXIS 20 (Miss. 1883).

2. Construction, generally.

This statute, being highly penal, is to be strictly construed against any claim thereunder. State Tax Com. v. Mitchell, 235 Miss. 264, 109 So. 2d 154, 1959 Miss. LEXIS 424 (Miss. 1959).

This section [Code 1942, § 273] is highly penal and is to be strictly construed against any claim thereunder. Yellow Mfg. Acceptance Corp. v. American Oil Co., 191 Miss. 757, 2 So. 2d 834, 1941 Miss. LEXIS 161 (Miss. 1941); Merchants Grocery Co. v. Gulley Grocery Co., 210 Miss. 33, 48 So. 2d 606, 1950 Miss. LEXIS 317 (Miss. 1950).

The purpose of the statute [Code 1942, § 273] is to defeat secret liens, and should not be tortured into a strained construction to defeat honest transactions entered into in accordance with upright business practices. Floyd v. C. Nelson Mfg. Co., 93 F.2d 857, 1938 U.S. App. LEXIS 3677 (5th Cir. 1938).

3. Reservation of title to property by seller.

This statute does not preclude the assertion of rights under a duly recorded title retention contract adequately describing the property. Floyd v. C. Nelson Mfg. Co., 93 F.2d 857, 1938 U.S. App. LEXIS 3677 (5th Cir. 1938).

But it does cut off and defeat lien claimants under instruments describing the property claimed insufficiently to identify it. Liquid Carbonic Corp. v. Phillips, 68 F.2d 515, 1934 U.S. App. LEXIS 4895 (5th Cir. Miss. 1934).

The exception made by the courts from the operation of this statute [Code 1942, § 273] of liens created by duly recorded instruments presupposes that the description in such instrument must have been such as to enable a third person to identify the property to the exclusion of all other property without the assistance of external evidence. In re Caver, Caver & Co., 42 F.2d 293, 1930 U.S. Dist. LEXIS 1149 (D. Miss. 1930).

Descriptive words in instruments retaining title held insufficient within statute providing that property used in business shall be liable for debt. In re Caver, Caver & Co., 42 F.2d 293, 1930 U.S. Dist. LEXIS 1149 (D. Miss. 1930).

Recorded instrument retaining title without specifically describing property was void as to trustee in bankruptcy for buyers. In re Caver, Caver & Co., 42 F.2d 293, 1930 U.S. Dist. LEXIS 1149 (D. Miss. 1930).

Landlord cannot subject for rent due by person transacting business as trader property which he acquired under recorded contract of sale reserving title. Fitz Gerald v. American Mfg. Co., 114 Miss. 580, 75 So. 440 (Miss. 1917).

This section [Code 1942, § 273] has no application against the original seller, who, to secure the purchase money, reserves title by an instrument signed by the purchaser and duly acknowledged and recorded. Tufts v. Stone, 70 Miss. 54, 11 So. 792, 1892 Miss. LEXIS 78 (Miss. 1892).

Where a hotel keeper purchased a cooking range under a recorded agreement that the title was to remain in the seller until the price was paid, one who succeeded him as owner of the hotel could not hold the range by virtue of this section [Code 1942, § 273]. John Van Range Co. v. Allen, 7 So. 499 (Miss. 1890).

4. Assignment.

Successive assignments of book accounts as security for a loan, the assignee having exercised complete dominion over the accounts, are not invalidated as to other creditors of the assignor by failure to comply with the statute. Crump v. Hill, 105 F.2d 124, 1939 U.S. App. LEXIS 3267 (5th Cir. Miss. 1939).

Assignment of fire insurance policies on a stock of goods before loss are not within the operation of the statute. In re Star Gorcery Co., 2 F. Supp. 21, 1933 U.S. Dist. LEXIS 1837 (D. Miss. 1933).

The right of a seller to retake property upon default in the payment of the purchase-price, the title to which was reserved in him, is not destroyed by an assignment by the purchaser for the benefit of his creditors, and is not affected by the statute. Gayden v. Tufts, 68 Miss. 691, 10 So. 53, 1891 Miss. LEXIS 39 (Miss. 1891).

5. Use of property as essential to application of statute.

Articles repossessed by a dealer's assignee of conditional sales contracts and mingled by him, with a view to resale, with the stock in trade of the dealer without disclosing such assignee's ownership, are "used or acquired" in the dealer's business within the meaning of the statute [Code 1942, § 273] and therefore subject to claims of the dealer's creditors. State Tax Com. v. Mitchell, 235 Miss. 264, 109 So. 2d 154, 1959 Miss. LEXIS 424 (Miss. 1959).

The mere permissive possession of property by a trader, where he has no right to use it in his business, does not bring him within the operation of the sign statute, and therefore, upon the default of purchasers of automobiles under conditional sales contracts held by a foreign credit corporation, the permissive possession of the automobiles by a dealer did not bring him within the operation of the statute. Yellow Mfg. Acceptance Corp. v. American Oil Co., 191 Miss. 757, 2 So. 2d 834, 1941 Miss. LEXIS 161 (Miss. 1941).

Bankrupt's trustee held not entitled to recover value of automobile repossessed by finance company, which was conditionally sold to bankrupt, who represented in finance papers that automobile was for personal use, but who used automobile in his business in violation of his agreement, in absence of evidence that finance company knew bankrupt was using automobile in his business or that it authorized him to do so. Archibald v. General Motors Acceptance Corp., 172 Miss. 278, 159 So. 843, 1935 Miss. LEXIS 131 (Miss. 1935).

In action by bankrupt's trustee to recover value of automobile repossessed by finance company, evidence that bankrupt, in application for credit, stated automobile was for personal use, that conditional seller's title was assigned to finance company with bankrupt's consent, and that finance company did not know bankrupt was using automobile in his business, sustained burden imposed on finance company, to defeat trustee's recovery, of showing it owned automobile and that automobile was not acquired or used by bankrupt with its consent. Archibald v. General Motors Acceptance Corp., 172 Miss. 278, 159 So. 843, 1935 Miss. LEXIS 131 (Miss. 1935).

This section [Code 1942, § 273] does not apply to property neither used nor acquired in the trader's business. Longino v. Delta Bank, 76 Miss. 395, 24 So. 901, 1898 Miss. LEXIS 113 (Miss. 1898).

Unless the property be "used or acquired" in the business with the consent of the real owner, it does not become liable under the section [Code 1942, § 273]. Adams v. Berg, 67 Miss. 234, 7 So. 225, 1889 Miss. LEXIS 52 (Miss. 1889).

The mere permissive possession by a trader of property, where he has neither an interest in nor right to "use" it in his business, does not bring it within the section [Code 1942, § 273]. Hall's Self-Feeding Cotton Gin Co. v. Berg, 65 Miss. 184, 3 So. 372, 1887 Miss. LEXIS 32 (Miss. 1887).

6. Trading in own name.

Where trustee showed that bankrupt transacted business in own name, used automobile in business, displayed it for sale, and showed adjudication in bankruptcy, finance company which resold automobile had burden of showing that automobile belonged to it, was not acquired or used by bankrupt in his business with its consent, or that finance company had such lien, of which trustee had actual or constructive notice, as would make statute inoperative. Archibald v. General Motors Acceptance Corp., 172 Miss. 278, 159 So. 843, 1935 Miss. LEXIS 131 (Miss. 1935).

Where a decedent had conducted the business of trader in his own name, although the money for purchasing the stock had been furnished by another, his administratrix had the presumptive right of possession of the stock until all creditors of the decedent had been paid, and could maintain replevin therefor, although no actual debts against the estate were shown, where the time allowed creditors to probate accounts had not expired. Hunter v. Forrest, 115 Miss. 7, 75 So. 753, 1917 Miss. LEXIS 176 (Miss. 1917).

In such case, the right of possession of the administratrix was superior to that of the true owner of the stock. Hunter v. Forrest, 115 Miss. 7, 75 So. 753, 1917 Miss. LEXIS 176 (Miss. 1917).

Creditors held entitled to treat gas engine in hands of hardware company as property of the hardware company where the place of business bore no sign showing it was agent for the manufacturer. Gillaspy v. International Harvester Co., 109 Miss. 136, 67 So. 904, 1915 Miss. LEXIS 125 (Miss. 1915).

Person operating business for sale of pianos in own name was a trader, and pianos acquired individually were liable for his debts. Merchants' & Farmers' Bank v. Schaaf, 108 Miss. 121, 66 So. 402, 1914 Miss. LEXIS 178 (Miss. 1914).

The goods of a merchant whose business sign does not specify ownership in the defendant in execution are not liable to his creditor because the merchant caused the goods purchased by him to be shipped in the defendant's name and carried on the business correspondence and paid a privilege tax in his name, but without his knowledge or consent. Albin v. Howard, 74 Miss. 370, 20 So. 844, 1896 Miss. LEXIS 113 (Miss. 1896).

One carrying on business in his own name, under a sign bearing his name, with the addition of the word "proprietor," although insolvent, may sell in good faith the property employed in such business to a creditor in satisfaction of his debt, inasmuch as the creditor might, under this section, have enforced such application by law. Columbus Buggy Co. v. Turley, 73 Miss. 529, 19 So. 232, 1895 Miss. LEXIS 154 (Miss. 1895).

Where wagons are placed in the custody of a merchant and kept in a lot adjoining his store, to be sold as a part of his stock, they are subject to his debts, though sold on commission for a manufacturer, who reserves the legal title as security for the price. Citizens' Bank v. Studebaker Bros. Mfg. Co., 71 Miss. 544, 14 So. 733, 1893 Miss. LEXIS 116 (Miss. 1893).

The requirement of a sign applies only to him who appends to his name in business such words as “agent,” “factor” or “company,” or the like; and where a married woman transacts a mercantile business in her own name and with her own means, though it be conducted by her husband as her agent, the goods are not liable for the husband’s debts for want of a sign. Harris v. Robson, 68 Miss. 506, 9 So. 829, 1891 Miss. LEXIS 20 (Miss. 1891); Schoolfield, Hananer & Co. v. Wilkins, 60 Miss. 238, 1882 Miss. LEXIS 38 (Miss. 1882).

It is erroneous to assume that the debtor, by “conducting” the business, was “transacting business in his own name,” within the meaning of the statute [Code 1942, § 273]. Harris v. Robson, 68 Miss. 506, 9 So. 829, 1891 Miss. LEXIS 20 (Miss. 1891).

The goods of a principal are not liable to the debts of a mere clerk. To make the goods liable to the debts of one not the owner, under the statute, he must have “transacted the business in his own name.” Carberry v. Worrell, 68 Miss. 573, 9 So. 290, 1891 Miss. LEXIS 2 (Miss. 1891).

The name on a business sign on the house in which a mercantile business is conducted does not, per se, fix the ownership of the goods in him whose name is on the sign and make them liable for his debts. Wolf & Marks v. Kahn, 62 Miss. 814, 1885 Miss. LEXIS 153 (Miss. 1885).

But if one transacts business in his own name for the secret benefit of another, the property used or acquired in the business will be liable for the debts of the former. Wolf & Marks v. Kahn, 62 Miss. 814, 1885 Miss. LEXIS 153 (Miss. 1885).

A cotton-buyer transacts “business” within the meaning of the section [Code 1942, § 273] if he have an office in a town, and on the door of which is an advertisement of his business signed by himself. Gumbel v. Koon, 59 Miss. 264, 1881 Miss. LEXIS 115 (Miss. 1881).

7. Trading with undisclosed principal.

Where judgment debtor conducted filling station under agreement with third party who furnished gas and oil for sale at fixed commission, and no sign was posted disclosing ownership of property, gas and oil found at filling station held subject to execution taken out by judgment creditor to satisfy judgment, notwithstanding ownership of such oil and gas by third party. Louisiana Oil Corp. v. Robbins, 169 Miss. 39, 152 So. 846, 1934 Miss. LEXIS 36 (Miss. 1934).

Automobiles repossessed by a finance company, displayed for sale by a dealer with the finance company’s consent under a sign bearing only the dealer’s name, are to be treated in favor of his creditors, and therefore in favor of his trustee in bankruptcy, as his property. In re Waynesboro Motor Co., 60 F.2d 668, 1932 U.S. Dist. LEXIS 1389 (D. Miss. 1932).

Evidence held not to warrant finding that wife violated the law in failing to change sign over place of business after purchase from husband. Whittington v. Yazoo Delta Mortg. Co., 148 Miss. 861, 114 So. 752, 1927 Miss. LEXIS 80 (Miss. 1927).

Conduct of business by bankrupt’s wife with husband as manager without sign on building held not a violation of the Sign Statute. Rubenstein v. Lynchburg Shoe Co., 125 Miss. 528, 88 So. 14, 1921 Miss. LEXIS 139 (Miss. 1921).

Upon buying given commodity from H. & B. partnership defendant became debtor of H. & B., and fact that B. did not disclose he was also member of B. Bros. Co. which was indebted to defendant, did not authorize instructed verdict for defendant. Hobbs & Buck v. Herman Grocer Co., 113 Miss. 332, 74 So. 26, 1916 Miss. LEXIS 22 (Miss. 1916).

Creditors of clerk who had same name as one of partners and frequently drew checks on partnership account, could not hold partnership property liable for their debts because there was no sign on the building naming members of the firm. J. M. Robinson, Norton Co. v. Godsey, 111 Miss. 171, 71 So. 312, 1916 Miss. LEXIS 262 (Miss. 1916).

Receiver held entitled to possession of gasoline engines in hands of hardware company acting as agent of harvester company without sign indicating agency, although the harvester company commenced a replevin action before appointment of the receiver. P. E. Payne Hardware Co. v. International Harvester

Co., 110 Miss. 783, 70 So. 892, 1916 Miss. LEXIS 199 (Miss. 1916).

The name of the principal or the real owner was not disclosed by a sign, "McAdams & Sons, Agents for Sheldon, Dale & Co.," and therefore an execution against the agents was good as against property in their possession and belonging to their principals. F. M. Dale & Co. v. Harrahan, 85 Miss. 49, 37 So. 458, 1904 Miss. LEXIS 127 (Miss. 1904).

Where a mercantile business was conducted under the name of "Ormond Grocery Company," without a sign disclosing the real owner, the property used and acquired therein is subject to the debts of the party transacting the business, although he was in fact the agent of an undisclosed principal. Meridian Land & Industrial Co. v. J. B. Ormond & Co., 82 Miss. 758, 35 So. 179, 1903 Miss. LEXIS 192 (Miss. 1903).

The proceeds of a policy of fire insurance on goods acquired and used in such business, and burned, are liable to the creditors of the party who transacted the business and may be garnished by them. Meridian Land & Industrial Co. v. J. B. Ormond & Co., 82 Miss. 758, 35 So. 179, 1903 Miss. LEXIS 192 (Miss. 1903).

Where one transacts business in his own name, without a sign disclosing that another owns an interest therein, all the property used in the business is liable for his debts; and this although such other is interested as a silent partner and personally assists in carrying on the business, ostensibly as clerk. Howe v. Kerr, 69 Miss. 311, 13 So. 730, 1891 Miss. LEXIS 154 (Miss. 1891).

Where a merchant sold his stock of goods and remained in the store as clerk of the buyer, who had no sign, it not appearing who was transacting the business, the goods were not liable for the debts of the seller. Bufkin v. Lyon, 68 Miss. 255, 10 So. 38, 1890 Miss. LEXIS 84 (Miss. 1890).

But the husband in such a case will be allowed to claim property as exempt under § 307, Code 1942. Stein v. Hamblett, 66 Miss. 112, 5 So. 524, 1888 Miss. LEXIS 72 (Miss. 1888).

Where the wife is the actual partner in a mercantile firm, and makes her husband her agent and manager, he thereby becomes her agent within the meaning of the section [Code 1942, § 273], and must disclose the name of his principal in the sign. Evans v. Henley, 66 Miss. 148, 5 So. 522, 1888 Miss. LEXIS 79 (Miss. 1888).

A business conducted by the husband, who usually superintended and managed it, having a sign in the words "Carr's Stable," and advertising the same as "Carr's Stable," managed by him, is within the section [Code 1942, § 273] as his property, even though the wife owns the property, leased the building, and paid the privilege license, which was posted in the office of the stable, and the books and accounts were in her name. Hamblet v. Steen, 65 Miss. 474, 4 So. 431, 1888 Miss. LEXIS 25 (Miss. 1888).

The effect of the statute [Code 1942, § 273] is to make all of the property used or acquired in the business the property of him who transacts the business, and liable for his debts, without regard to the sign under which the business is conducted, unless by a proper sign the name of the true owner be disclosed. Paine v. Hall's Safe & Lock Co., 64 Miss. 175, 1 So. 56, 1886 Miss. LEXIS 36 (Miss. 1886); Loeb & Bloom v. John P. Morton & Co., 63 Miss. 280, 1885 Miss. LEXIS 62 (Miss. 1885).

Creditors, whether antecedent or subsequent, and with or without notice of the undisclosed principal, can avail themselves of the section [Code 1942, § 273]. Quin v. Myles, 59 Miss. 375, 1882 Miss. LEXIS 120 (Miss. 1882); Gumbel v. Koon, 59 Miss. 264, 1881 Miss. LEXIS 115 (Miss. 1881).

Property used in a bar and billiard-room, conducted under the sign of "Empire Saloon," is liable to the satisfaction of judgment against an employee who conducts the business under the name of the owner " & Co.," under a written contract with the owner that he is to receive a part of the profits for his services. Quin v. Myles, 59 Miss. 375, 1882 Miss. LEXIS 120 (Miss. 1882).

8. Particular businesses.

Electrical appliance dealer is a "trader" within this provision [Code 1942, § 273]. State Tax Com. v. Mitchell, 235 Miss. 264, 109 So. 2d 154, 1959 Miss. LEXIS 424 (Miss. 1959).

The integration of the services and activities of a business, which included a gas filling station, the sale of soft drinks, beer, and cigarettes, and the operation of bar and dance hall, subjected the property used or acquired therein to liability to creditors under the business sign statute, as against the claim of the conditional seller of electric refrigerators used in such business. Ellzey v. Frederic, 191 Miss. 633, 3 So. 2d 849, 1941 Miss. LEXIS 173 (Miss. 1941).

One who carries on the business of a gasoline filling station is a "trader" within the meaning of the business sign statute. Ellzey v. Frederic, 191 Miss. 633, 3 So. 2d 849, 1941 Miss. LEXIS 173 (Miss. 1941).

The statute [Code 1942, § 273] applies only where the business transacted is that of a trader or one ejusdem generis, and where there are separate or distinct lines of business carried on by the same corporation the property of the non-trading one is not within the statute. In re Hemming, 51 F.2d 850, 1931 U.S. Dist. LEXIS 1582 (D. Miss. 1931).

Bankrupt wagon manufacturer was "trader" as to road-building machines purchased by him for resale, so as to entitle trustee to their possession for benefit of general creditors. In re Hemming, 51 F.2d 850, 1931 U.S. Dist. LEXIS 1582 (D. Miss. 1931).

Business Sign Statute held not applicable to sale of restaurant operated under name of "Elite Cafe" where merchandise was not sold in usual mercantile way, and there was no claim against property conveyed. Carnaggio Bros. v. Greenwood, 142 Miss. 885, 108 So. 141, 1926 Miss. LEXIS 132 (Miss. 1926).

Undertaker not merchant or trader within Business Sign Statute. Sayers & Scoville Co. v. Doak, 127 Miss. 216, 89 So. 917, 1921 Miss. LEXIS 216 (Miss. 1921).

Acquisition and use of jitney buses for hire does not come within this section [Code 1942, § 273]. Orr v. Jackson Jitney Car Co., 115 Miss. 140, 75 So. 945, 1917 Miss. LEXIS 193 (Miss. 1917).

Statute [Code 1942, § 273] inapplicable to woman keeping restaurant and boarding house. Oliver v. Ferguson & Allen, 112 Miss. 521, 73 So. 569, 1916 Miss. LEXIS 141 (Miss. 1916).

A single sale does not make one a trader. Durham v. Slidell Liquor Co., 94 Miss. 140, 49 So. 739, 1904 Miss. LEXIS 1 (Miss. 1904).

This section [Code 1942, § 273] has no application to a person transacting business solely as an insurance agent. I. L. Lyons & Co. v. S. S. Steele & Co., 86 Miss. 261, 38 So. 371, 1905 Miss. LEXIS 47 (Miss. 1905).

The section [Code 1942, § 273] does not apply to a person engaged in the business of buying rough lumber, planing it for building purposes, and reselling it. Willis v. Memphis Grocery Co., 19 So. 101 (Miss. 1896).

The section [Code 1942, § 273] does not apply to a person conducting the business of milling and ginning in the country, for the public, but only to traders and persons ejusdem generis. Yale & Bowling v. Taylor Mfg. Co., 63 Miss. 598, 1886 Miss. LEXIS 146 (Miss. 1886).

RESEARCH REFERENCES

Am. Jur.

59A Am. Jur. 2d, Partnership §§ 52 et seq.

§ 15-3-9. Creditors to be notified of destruction of insured stock of merchandise by fire.

In case of the destruction of a stock of merchandise by fire upon which there is insurance against such loss, the holder of such insurance policies shall within five days after such loss notify his creditors to whom he is indebted for merchandise, of his loss and the amount of insurance carried, and no such policy or policies of insurance shall be transferred or assigned for ten days after such notice, and no such insurance shall be paid for fifteen days next after the occurrence of any such fire.

HISTORY: Codes, Hemingway's 1917, § 3130; 1930, § 3354; 1942, § 276; Laws, 1908, ch. 100.

Cross References — Notice of loss of mortgaged cattle, see § 69-29-13.
Protection of mortgages in order of priority, see § 83-13-7.
Insurance mortgage clause, see § 83-13-9.
Proof of loss, see § 83-13-13.

JUDICIAL DECISIONS

1. In general.

The intent of the legislature and the force and effect of this section [Code 1942, § 276] is to freeze the proceeds of the insurance in the hands of the insurance companies until creditors of the holder of the insurance have had an opportunity to protect themselves in regard to the loss. Doty v. Atkinson, 262 F. Supp. 477, 1966 U.S. Dist. LEXIS 6877 (N.D. Miss. 1966).

Where, in violation of this section [Code 1942, § 276], the insured did not give notice to his creditors of the amount of insurance which he carried on his stock of goods within five days after sustaining a fire loss and assigned the proceeds of the policy within eight days after loss, the assignment was void and the assignee held the proceeds of the policy as trustee for the insured's creditors, and this was true despite the fact that the assignee had paid the insured the face value of the policy. Doty v. Atkinson, 262 F. Supp. 477, 1966 U.S. Dist. LEXIS 6877 (N.D. Miss. 1966).

This provision [Code 1942, § 276] has no application except to transfers or assignments made after the fire occurs. In re Star Gorcery Co., 2 F. Supp. 21, 1933 U.S. Dist. LEXIS 1837 (D. Miss. 1933).

Assignment of proceeds of fire insurance policy 8 days after loss without notice to creditors and payment to assignee less than 15 days after fire, renders assignee a trustee of the funds for all creditors including assignee. Citizens' Nat'l Bank v. Yazoo Grocery Co., 113 Miss. 87, 73 So. 877, 1916 Miss. LEXIS 15 (Miss. 1916).

§ 15-3-11. Actions on contracts made during infancy.

An action shall not be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or contract made during infancy, unless such promise or ratification shall be made by some writing, signed by the person to be charged therewith.

HISTORY: Codes, 1857, ch. 44, art. 8; 1871, § 2898; 1880, § 1298; 1892, § 4232; 1906, § 4782; Hemingway's 1917, § 3126; 1930, § 3350; 1942, § 271.

Cross References — Saving rights of infants, see § 11-5-115.
Saving in favor of those under disabilities, see § 15-1-59.
Requirement that certain contracts be in writing, see § 15-3-1.
Assailing chancery decree collaterally, see § 91-1-31.
Competency of persons eighteen years of age or older to contract in matters affecting personal property, see § 93-19-13.

JUDICIAL DECISIONS

1. In general.

A finance company could not maintain an action against the minor maker of a note for default of a car finance contract, even though he made several payments after achieving maturity, where the minor did not ratify the contract in writing after reaching the age of maturity, as required by statute, and where he expressly disaffirmed the contract. Ray v. Acme Finance Corp., 367 So. 2d 186, 1979 Miss. LEXIS 2215 (Miss. 1979).

Where a minor lost her life during the time in which she had a right to rescind a contract made during her infancy for the purchase of an automobile, the administrator of the minor's estate could properly disaffirm the claim against the estate based on a conditional sales contract for the purchase of the automobile and was not estopped to rescind the contract or to deny ratification of the contract. Johnson Motors, Inc. v. Coleman, 232 So. 2d 716, 1970 Miss. LEXIS 1638 (Miss. 1970).

The administrator of a minor's estate seeking to disaffirm a claim against the estate based on the conditional sale of an automobile, was entitled to a judgment against the automobile dealer for the value of an automobile which the minor had inherited and traded in on the purchase of a new automobile. Johnson Motors, Inc. v. Coleman, 232 So. 2d 716, 1970 Miss. LEXIS 1638 (Miss. 1970).

A mere acknowledgment in writing is not sufficient. There must be an express promise to pay. Edmunds v. Mister, 58 Miss. 765, 1881 Miss. LEXIS 35 (Miss. 1881).

RESEARCH REFERENCES

ALR.

Failure to disaffirm as ratification of infant's executory contract. 5 A.L.R.2d 7.

Liability of surety on infant's contract or obligation, where contract is disaffirmed by infant. 44 A.L.R.3d 1417.

§ 15-3-13. Chapter is not applicable to official sales.

Nothing in this article shall apply to official sales by sheriffs, constables, executors, administrators, guardians, receivers, commissioners, trustees in bankruptcy, or any public officer.

HISTORY: Codes, Hemingway's 1917, § 3131; 1930, § 3355; 1942, § 277; Laws, 1908, ch. 100.

Cross References — Sales under decrees of chancery courts, see §§ 11-5-93 et seq.
Sales under execution, see §§ 13-3-161 et seq.

RESEARCH REFERENCES

ALR.

Implied power of executor or testamentary trustee to sell real estate. 23 A.L.R.2d 1000.

Power of sale given trustee by will or trust instrument as surviving termination of trust. 43 A.L.R.2d 1102.

§ 15-3-15. Effect of chapter on rules of evidence or presumptions of law.

Except as especially provided, nothing contained in this article, nor any act thereunder, shall change or affect the present rules of evidence or the present presumptions of law.

HISTORY: Codes, Hemingway's 1917, § 3132; 1930, § 3356; 1942, § 278; Laws, 1908, ch. 100.

Cross References — Presumption attending certificates, see § 13-1-81.

JUDICIAL DECISIONS

1. In general.

When a writing or memorandum is lost or destroyed, both its existence and contents may be proven by parol evidence; the loss or destruction of a memorandum does not deprive it of effect under the Statute of Frauds. Thus, § 15-1-29, § 15-1-73 and the Statute of Frauds (§ 15-3-1) did not bar an action to enforce a loan agreement which was allegedly destroyed in a fire where the plaintiff sufficiently proved the existence and contents of the destroyed memorandum. Williams v. Evans, 547 So. 2d 54, 1989 Miss. LEXIS 335 (Miss. 1989).

In proceeding under bulk sales statute to hold purchaser for debt, value of goods when sold must be alleged and proved. McLendon v. People's Bank of Lumberton, 111 So. 843 (Miss. 1927).

ARTICLE 3.

UNIFORM FRAUDULENT TRANSFER ACT.

Sec.

15-3-101. Definitions.
15-3-103. Debtor insolvency; partnership insolvency; excluded assets; excluded debts.
15-3-105. Value specified.
15-3-107. Fraudulent transfers as to present and future creditors; determination of actual intent; rebuttable presumption of fraud.
15-3-109. Determination of when a transfer is made or obligation incurred.
15-3-111. Creditor remedies.
15-3-113. Transferee defenses, liability and protection.
15-3-115. Extinguishment of cause of action.
15-3-117. Supplementary general principles of law applicable.
15-3-119. Rules of construction.
15-3-121. Short title.

§ 15-3-101. Definitions.

The following words and phrases shall have the meanings ascribed herein, unless the context clearly indicates otherwise:

(a) "Affiliate" means:

(i) A person who directly or indirectly owns, controls or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not exercised the power to vote;

(ii) A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(b) "Asset" means property of a debtor, but the term does not include:

(i) Property to the extent it is encumbered by a valid lien;

(ii) Property to the extent it is generally exempt under nonbankruptcy law; or

(iii) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(c) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(d) "Creditor" means a person who has a claim.

(e) "Debt" means liability on a claim.

(f) "Debtor" means a person who is liable on a claim.

(g) "Insider" includes:

(i) If the debtor is an individual,

1. A relative of the debtor or of a general partner of the debtor;

2. A partnership in which the debtor is a general partner;

3. A general partner in a partnership described in clause 2; or

4. A corporation of which the debtor is a director, officer or person in control;

(ii) If the debtor is a corporation,

1. A director of the debtor;

2. An officer of the debtor;

3. A person in control of the debtor;

4. A partnership in which the debtor is a general partner;

5. A general partner in a partnership described in clause 4; or

6. A relative of a general partner, director, officer or person in control of the debtor;

(iii) If the debtor is a partnership,

1. A general partner in the debtor;

2. A relative of a general partner in, or a general partner of, or a person in control of the debtor;

3. Another partnership in which the debtor is a general partner;

4. A general partner in a partnership described in clause 3; or

5. A person in control of the debtor;

(iv) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) A managing agent of the debtor.

(h) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(i) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust or any other legal or commercial entity.

(j) "Property" means anything that may be the subject of ownership.

(k) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(*l*) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance.

(m) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

HISTORY: Laws, 2006, ch. 371, § 1, eff from and after July 1, 2006.

Cross References — Attorney General may institute and prosecute suits to vacate fraudulent conveyances, see § 7-3-35.

Creditors may attack fraudulent conveyances, see § 11-5-75.

Fraudulent conveyances, judgments, loans and the like, and exceptions, see § 15-3-5.

Attorney general giving approval to district attorney to prosecute suits to vacate fraudulent conveyances, see § 25-31-25.

Fraudulent purchases of public land being declared void, see § 29-1-11.

Insurance rehabilitation and liquidation – voiding of fraudulent transfers, see § 83-24-27.

JUDICIAL DECISIONS

1. Claim against only one tenant.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decdent's death. Kelly v. Roby (In re Estate of Roby), 84 So. 3d 786, 2011 Miss. App. LEXIS 405 (Miss. Ct. App. 2011).

§ 15-3-103. Debtor insolvency; partnership insolvency; excluded assets; excluded debts.

(1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(2) A debtor who generally is not paying his or her debts as they become due is presumed to be insolvent.

(3) A partnership is insolvent under subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(4) Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under this article.

(5) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

HISTORY: Laws, 2006, ch. 371, § 2, eff from and after July 1, 2006.

§ 15-3-105. Value specified.

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of Section 15-3-107(2)(*l*), (m) and (n), a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

HISTORY: Laws, 2006, ch. 371, § 3, eff from and after July 1, 2006.

§ 15-3-107. Fraudulent transfers as to present and future creditors; determination of actual intent; rebuttable presumption of fraud.

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay or defraud any creditor of the debtor.

(2) In determining actual intent under subsection (1), consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) The transfer was of substantially all the debtor's assets;

(f) The debtor absconded;

(g) The debtor removed or concealed assets;

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred;

(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor;

(*l*) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due;

(m) A transfer made or obligation incurred by a debtor may be fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation; and

(n) A transfer made by a debtor may be fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) If there exists a combination of facts such as described in subsection (2)(*l*), (m) or (n) only, then there will be a strong presumption of fraud which can be rebutted only by clear and convincing evidence.

HISTORY: Laws, 2006, ch. 371, § 4, eff from and after July 1, 2006.

JUDICIAL DECISIONS

ANALYSIS

1. No fraudulent transfer.
2. Action time barred.

1. No fraudulent transfer.

During the pending of divorce proceedings, a chancery court erred in setting aside the transfer of sale proceeds of a husband's business to his mother under Miss. Code Ann. § 15-3-107(1) (Supp. 2009) as a fraudulent conveyance as there was clear and convincing evidence the funds were to pay a well-documented debt he owed his mother. Carroll v. Carroll, 78 So. 3d 332, 2010 Miss. App. LEXIS 673 (Miss. Ct. App. 2010), cert. denied, 78 So. 3d 906, 2012 Miss. LEXIS 40 (Miss. 2012).

2. Action time barred.

Judgment creditor did not prevail in an action against a corporate officer's wife and three limited liability companies under the Mississippi Uniform Fraudulent Transfer Act because the statute of limitations had expired; the Act's statute of limitations displaced the general statute of limitations for fraudulent transfer claims. EDW Invs., LLC v. Barnett, 149 So. 3d 489, 2014 Miss. LEXIS 533 (Miss. 2014).

§ 15-3-109. Determination of when a transfer is made or obligation incurred.

For the purposes of this article:

(a) A transfer is made:

(i) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this article that is superior to the interest of the transferee;

(b) If applicable law permits the transfer to be perfected as provided in paragraph (a) and the transfer is not so perfected before the commencement of an action for relief under this article, the transfer is deemed made immediately before the commencement of the action;

(c) If applicable law does not permit the transfer to be perfected as provided in paragraph (a), the transfer is made when it becomes effective between the debtor and the transferee;

(d) A transfer is not made until the debtor has acquired rights in the asset transferred;

(e) An obligation is incurred:

(i) If oral, when it becomes effective between the parties; or

(ii) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

HISTORY: Laws, 2006, ch. 371, § 5, eff from and after July 1, 2006.

§ 15-3-111. Creditor remedies.

(1) In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in Section 15-3-113, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee;

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

HISTORY: Laws, 2006, ch. 371, § 6, eff from and after July 1, 2006.

§ 15-3-113. Transferee defenses, liability and protection.

(1) A transfer or obligation is not voidable under Section 15-3-107(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 15-3-111(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) The first transferee of the asset or the person for whose benefit the transfer was made; or

(b) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain any interest in the asset transferred;

(b) Enforcement of any obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Section 15-3-107(2)(*l*), (m) or (n) if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

(6) A transfer is not voidable under Section 15-3-107(2)(n):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

HISTORY: Laws, 2006, ch. 371, § 7, eff from and after July 1, 2006.

Cross References — Uniform Commercial Code – Secured Transactions, see §§ 75-9-101.

§ 15-3-115. Extinguishment of cause of action.

A cause of action with respect to a fraudulent transfer or obligation under this article is extinguished unless action is brought:

(a) Under Section 15-3-107(1), within three (3) years after the transfer was made or the obligation was incurred or, if later, within one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) Under Section 15-3-107(2)(*l*) or (m), within three (3) years after the transfer was made or the obligation was incurred; or

(c) Under Section 15-3-107(2)(n), within one (1) year after the transfer was made or the obligation was incurred.

HISTORY: Laws, 2006, ch. 371, § 8, eff from and after July 1, 2006.

JUDICIAL DECISIONS

1. Application.

Judgment creditor did not prevail in an action against a corporate officer's wife and three limited liability companies under the Mississippi Uniform Fraudulent Transfer Act because the statute of limitations had expired; the Act's statute of limitations displaced the general statute of limitations for fraudulent transfer claims. EDW Invs., LLC v. Barnett, 149 So. 3d 489, 2014 Miss. LEXIS 533 (Miss. 2014).

§ 15-3-117. Supplementary general principles of law applicable.

Unless displaced by the provisions of this article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions.

HISTORY: Laws, 2006, ch. 371, § 9, eff from and after July 1, 2006.

JUDICIAL DECISIONS

1. Application.

Judgment creditor did not prevail in an action against a corporate officer's wife and three limited liability companies under the Mississippi Uniform Fraudulent Transfer Act because the statute of limitations had expired; the Act's statute of limitations displaced the general statute of limitations for fraudulent transfer claims. EDW Invs., LLC v. Barnett, 149 So. 3d 489, 2014 Miss. LEXIS 533 (Miss. 2014).

§ 15-3-119. Rules of construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

HISTORY: Laws, 2006, ch. 371, § 10, eff from and after July 1, 2006.

§ 15-3-121. Short title.

Sections 15-3-101 through 15-3-121 may be cited as the "Uniform Fraudulent Transfer Act."

HISTORY: Laws, 2006, ch. 371, § 11, eff from and after July 1, 2006.

[illegible] Rules of construction

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Lemma [illegible]

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